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Right to economic self-determination and the role of international law in the contemporary sovereign debt bondage
a case study of Nigeria

Abubakar, Aminu Abbas

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Right to Economic Self-determination and the Role of International Law in the Contemporary Sovereign Debt Bondage: A Case Study of Nigeria.

By

Aminu Abbas Abubakar

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Applicant:	Aminu Abubakar
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Declaration

I hereby declare that this thesis submitted for the Doctor of Philosophy (PhD) to Coventry University is my own work and has not been submitted to any other university for the award of any degree and, to the best of my knowledge and belief, contains no material previously published by another person, except where due reference has been made in the text.

Dedication

To Almighty God,

To my Parents,

I dedicate this PhD Thesis.

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Abstract

For many less developed African countries, the accumulation of sovereign debt at an unsustainable level has caused severe debt distress, and most significantly, years of abject submission and restraint on their freedom of economic policy choice.[1] The growing tension over the use of conditionality by financial creditors as a tool for control and violation of economic self-determination of the debtor has become a significant concern notwithstanding some of the benefits of financial assistance in addressing the countries' balance of payment and development project challenges. With the growing concern of the prospective new wave of a sovereign debt crisis in sub-Saharan Africa,[2] the question of sovereign debt obligations and the right to economic self-determination makes this study worthwhile. The study examines the claims of the emerging pattern of financial debt bondage and the role of international law in pushing the neo-colonial agenda of the international financial institutions including the International Monetary Fund (IMF) and the World Bank in Nigeria. The study explored the social context and the Nigerian experience with the sovereign debt conditionality vis-a-vis the local population's right to economic self-determination and the complex pattern of authority and decision-making in the economic affairs of the State. An analysis of the research data obtained through observation and interviews with key state officials, members of civil society organisations, academics and other relevant stakeholders in Nigeria, revealed a growing lack of economic autonomy, debt trap and perpetual dependency caused by the IFIs conditionality, which deprived Nigerians of the right to effect fundamental decisions about their economic affairs freely. For that reason, the study re-engages the debate on the application of economic self-determination in Nigeria through the lens of the Third World Approach to International Law (*TWAIL*). Using concrete historical and social pieces of evidence, the study demonstrates the role of Liberal Democracy and Human Rights Law approaches to 'internal self-determination' as promoting the course of international financial institutions in their economic domination.

[1] Lumina, C. (2013). Sovereign Debt and Human Rights. 289-301. Available at: https://www.ohchr.org/Documents/Issues/Development/RTDBook/PartIIIChapter21.pdf (last accessed on 14th March 2020)

[2] Anna, G. (2020). African Countries Face 'Wall' of Sovereign Debt Repayments. *Financial Times,* London, 10 February. Available at: https://www.ft.com/content/8c232df6-4451-11ea-abea-0c7a29cd66fe

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List of Abbreviation

ASUU: Academic Staff Union of Universities

AU: African Union

BPE: Bureau for Public Enterprises

CBN: Central Bank of Nigeria

CDHR: Committee for the Defence of Human Rights

CLO: Civil Liberties Organization

CRP: Constitutional Rights Projects

DMO: Debt Management Office

DRC: The Democratic Republic of the Congo

ECOSOC: Economic and Social Council

FOCAC: Forum on China–Africa Cooperation

FPIC: Free and Prior Informed Consent

ICCPR: International Covenant on Civil and Political Rights

ICESCR: International Covenant on Economic, Social and Cultural Rights

ICJ: International Court of Justice

IFIs: International Financial Institutions

IMF: International Monetary Fund

MASSOB: Movement for the Actualisation of the Sovereign State of Biafra

MEND: Movement for the Emancipation of the Niger Delta

MOSOP: Movement for the Survival of Ogoni People

MoU: Memorandum of Understanding

NANS: National Association of Nigerian Students

NAOC: Nigerian Agip Oil Corporation

NBA: Nigeria Bar Association

NBS: National Bureau of Statistics

NCF: National Consultative Forum

NEEDS: National Economic Empowerment and Development Strategy

NEPA: National Electric Power Authority

NGOs: Non-Governmental Organisations

NIEO: New International Economic Order

NITEL: Nigerian Telecommunications Limited

NLC: Nigerian Labour Congress

NMA: Nigerian Medical Association

NNPC: Nigerian National Petroleum Corporation

NUJ: Nigerian Union of Journalists

OAGF: Office of the Accountant General of the Federation

OBOR: One Belt One Road

PRONACO: Pro-Sovereign National Conference

PRPS: Poverty Reduction Strategy Paper

SAP: Structural Adjustment Programmes

SFEM: Second-Tier Foreign Exchange Market

SPDC: Shell Petroleum Development Corporation

TCPC: Technical Committee on Privatisation and Commercialisation

TWAIL: Third World Approach to International Law

UDHR: Universal Declaration on Human Right

UN: United Nations

WIN: Women in Nigeria

Introduction

> *"The whole history of the right of self-determination is the story of adapting to the evolving struggles of peoples attempting to achieve effective control over their own destinies, especially in reaction to circumstances that are discriminatory and oppressive."*[3]

The principle of self-determination is today one of the most invoked, yet notoriously elusive principle of international law that evades concrete legal delineation perhaps because of the dynamic nature of people's aspirations and the shifting demands. In theory, the principle encapsulates a law conferring all peoples the right to set the course of the lives and freely determine their affairs. However, when practice intersects with the theory, problems and difficulties often arise. The difficulty is not whether the principle confers right as a matter of law, but what right it confers and how can it practically be enforced.[4] The universal recognition of the right to self-determination of the former colonial territories under the acclaimed decolonisation process ostensibly confers those countries a right to freely design and pursue their political, economic and social aspirations.[5] However, nearly a century after the decolonisation of the former colonial territories, there still exists a sense of disappointment. A disappointment, that the dream of the newly independent states to live free from all forms of external economic control has been crushed by the rise of the modern global economic and political hegemony. The ever-expanding role of International Financial Institutions and their idealised lending policies, such as free trade and good governance, manifest a colonial feature, which poses a serious challenge to the realisation of people's aspirations and self-determination in the debt recipient countries. Many attempts by some of the debt recipient countries to address some of their economic and social challenges have

[3] Falk, R.A. (2002). *Human Rights Horizons: the Pursuit of Justice in a Globalizing World*. Routledge. P110

[4] Grant, T. D. (1999). Extending Decolonization: how the United Nations might have addressed Kosovo. *Ga. J. Int'l & Comp. L.*, *28*, 9.

[5] Harbeson, J. (1995). Africa in World Politics: Amid Renewal, Deepening Crisis. *Africa in world politics: Post-cold War Challenges*, pp.3-20.

been stifled by the IFIs imposed financial assistance conditionality and economic policy demands.

The global sovereign debt crisis of the early 1980s[6] marked the beginning of an era that saw a rise in the debt profile of less developed countries and the restructuring of several of the national economic development plans in favour of the IFIs economic model with its core dictates of orthodox neoliberalism.[7] The leading financial institutions, namely the International Monetary Fund and the World Bank, assumed significant power over the debt recipient countries' national economic policy-making space. Although slightly varied, the IMF and World Bank operations are moved by the grander mission embodying the neo-liberal economic policy of heavily infuse free-market programs and global economic governance, seen by many as a form of economic hegemony and arguably neo-colonialism. The hegemonic tendencies of the IFIs manifest in the imposition of iron policies through lending terms and obligations, which have two fundamental characters: the opening up of the national economy to the global market forces and the establishment of a one-size-fits-all liberal political and economic system. To the IFIs, the conventional wisdom in their lending policies is that a more liberalised and Non-interventionist State's role in the economy increases productivity and growth, particularly in highly indebted countries facing a slow and troubled economy, and therefore safeguards their financial credit. To the debt recipient country, however, the imposition of the IFIs neo-liberal economic model undermines the essential features of an independent state including decision-making power and effective governance, and thus, reinforces the general scepticism of the IFIs vicious neo-colonial agenda. At the core of this thesis, is the attempt to answer the questions that dominated most discussions on the IFIs operations that–what is the legitimacy of IFIs expanding role in the economic decision-making of its debt recipient states and how do we safeguard people's right to economic self-determination in the context of sovereign debt conditionality.

To give a clear direction to the study of economic self-determination in this thesis, it is crucial to start by distinguishing the legal right to self-determination from the political expression of the principle. The principle of self-determination has evolved to become an essential political and legal concept in the current global order. While the political doctrine of self-determination has been the political currency by which nation-states establish

[6] United Nations. (2017). World Economic and Social Survey 2013: Reflecting on Seventy Years of Development Policy Analysis.
[7] Harrison, G. (2005). Economic Faith, Social Project and a Misreading of African Society: The Travails of Neoliberalism in Africa. *Third World Quarterly*, *26*(8), 1303-1320.

their international political status, the legal doctrine of self-determination connotes a binding obligation that defines the action of states in light of the related political principle. While there have been little international judicial decisions on the application of the right to economic self-determination, the legal expression of "freely determined by people" is crucial in determining how the right is to be exercised. At the heart of the exercise of the right to economic self-determination lies the people's collective right to freely design and pursue their economic affairs and the exercise of permanent sovereignty and control over their resources. The right, as discussed in this study, has a distinct meaning from economic sovereignty or development right which seeks to define the process of change desirable and the means of allocation of resources most effective.[8] This study explores the challenges facing Nigeria regarding sovereign debt bondage and the growing concern within the country over how the lending conditionality imposed by IFIs affect the legal right to economic self-determination. The study navigates through the language of the right to economic self-determination to ascertain the scope of application of economic self-determination, particularly the reference to "freely determined by people" contained in the international legal documents. The study examines the IFIs lending conditionality to construe a legal analysis of how the sovereign debt conditionality affects the application of the right.

Adopting the theoretical construct of the Third World Approach to International Law (*TWAIL*), the study presents a critical analysis of the role of international law on the ongoing sovereign debt bondage affecting people's right to economic self-determination. Like many other *TWAIL* scholars on whose work I have relied and consulted in this thesis, such as Antony Anghie,[9] the thesis of this study centred on –the dramatic erosion of people's economic self-determination through demands for multiple-layers of conditionality from countries as one of the neo-colonial hegemonic mission of IFIs embedded in the international law. The embedded neoliberalism and liberal democratic principles used in the language of IFIs human rights has promoted the global economic order and the IFIs control in a manner that largely impinges on the exercise of meaningful right to self-determination for the less developed countries. The essential tenet of neoliberalism is the contraction of the state and the expansion of the global market,[10] whereas the liberal political principles embedded into the language of human rights is the recognition of all individuals as fundamentally free, and

[8] Sano, H. O. (2000). Development and Human Rights: the Necessary, but Partial Integration of Human Rights and Development. *Hum. Rts. Q.*, *22*, 734.

[9] Anghie, A. (2007). *Imperialism, Sovereignty and the Making of International Law* (Vol. 37). Cambridge University Press

[10] Brown, W. (2003). Neo-liberalism and the end of liberal democracy. *Theory & Event*, *7*(1).

the nature of liberty entails the negative and positive liberty.[11] Negative liberty usually requires freedom from the state's interference in an individual's civil and political rights, while positive liberty requires the state to actively promote social conditions that allow people to benefit from the rights.[12] In the broad sense, liberal political ideology gives more emphasis on negative liberty and seeks to protect the individual, rather than society as a whole. The study investigates the expansion of the IFIs good governance mission, which is seen by many *TWAIL* scholars to have extended the colonial heritage of international law.[13] The study also aims to offer a counter-hegemonic approach to the application of economic self-determination against sovereign debt bondage.[14]

The Context of the Research:

The scale of decline in economic and social living standard in Nigeria has been widely recognised to be a major issue threatening the network of relationships that forms the basis of the Nigerian political entity. Indeed, the failure of the government to take charge and bring about desired economic reforms has created a situation where several internal political forces emerged agitating for a national conference to review the structure of the country on the basis of people's right to self-determination. The survival of the country is now, more importantly, the question of where the root of the matter is and what causes the inability of the country to stir clear out of the existential crisis. Several explanations have been offered on what causes those existential crises and central to the many problems have been the state actions and the imposed neoliberal policies which promote and perpetuate the withering away of state social roles. For decades, the IFIs' lending Programs have been accused of playing an essential part in the larger tale of the post-colonial economic and social misfortune in Nigeria through the introduction of neoliberal economic policies in contradiction of the existing National Economic Plans that give more emphasis on people and the implementation of social welfare and interventionists' policies.[15] The introduction of IFIs' neoliberal lending policies altered the entire economic structure and generated lots of questions about the impact of policies on the free determination of economic governance in Nigeria. By pushing through

[11] Gray, J. (2009). *Liberalisms: essays in political philosophy*. Routledge. Pp 45 - 68
[12] *Ibid*
[13] Chimni, B. S. (2017). International Institutions Today: an Imperial Global State in the Making. In *Globalization and International Organizations* (pp. 41-78). Routledge.
[14] *Ibid*
[15] Jega, A. (Ed.). (2000). *Identity Transformation and Identity Politics under Structural Adjustment in Nigeria*. Nordic Africa Institute.

decrease government intervention on the economic and social living condition, local demands were ignored, sending very little hope of economic self-government and meaningful nation-building for Nigerians.

The introduction of the economic adjustment policies as part of the financial loan agreement between Nigeria and IMF in the early 1980s has led to several riots that left many people killed and many other casualties, with institutions temporary closed and activists detained for taking part in the campaign against the IFIs programs. These events planted the seed of public animosity towards the IFIs, which continues to this date. The IFIs Structural Adjustment Programmes (SAP), which comprises economic policies such as deregulation, privatisation and cuts in government spending, was seen as the leading cause for the existential crisis in Nigeria. Among the criticisms of the SAP and other lending conditionality is that it has become a significant factor contributing to the harsh living conditions by standing in the way of the funds that would otherwise have gone to social programs instead of being paid as debt service. The long and tortuous road to the implementation of SAP and the resultant harsh economic and social realities contributed to rising internal strife and ethnoreligious separatist agitation by people claiming to represent the economically marginalised and suppressed groups. As the IFIs economic programmes suffered legitimacy crisis during the large part of the 1980s, 1990s and 2000s, the institutions enlisted a more appealing strategy called the "Poverty Reduction Strategy Paper" (PRPS)[16] and the National Economic Empowerment and Development Strategy (NEEDS) serving as independent home-grown economic programmes.

Moreover, the good governance initiative emerged as IFIs lending condition fused into the structural adjustment policy framework.[17] The extension of the lending conditionality to good governance generated further debates concerning the expansion by the IFIs of its dominant role and control over the country's internal governance. The good governance initiative is accompanied by a significant increase in closer surveillance by the donor. Although some of the IFIs contractual terms are a necessary step in safeguarding financial credits, however, there are many concerns about the role of the IFIs conditionality in subjecting Nigeria to undesirable economic policy. Despite the proclaimed recognition of the central role of the people in the programme, this study explores the deepening condemnation

[16] *Nigeria - Poverty Reduction Strategy Paper (PRSP) and joint staff advisory note: Chairman's summing up (English).* Washington, D.C.: World Bank Group. Available at http://documents1.worldbank.org/curated/en/230091468120856740/pdf/341060rev0pdf.pdf

[17] Thomas, C. (1999). Does the Good Governance Policy of the International Financial Institutions Privilege Markets at the Expense of Democracy. *Conn. J. Int'l L.*, *14*, 551.

by a significant majority of Nigerians of the idea, design and formulation of the economic programmes. Concerned Nigerians, civil-society organisation and sometimes even government officials, hold strong opinions against the IFIs lending programmes as a form of control that often contributes to the internal strife. Aside from exercising considerable power and influence in policy formulation, financial creditors are also accused of engaging in vicious lending and approving of the mismanagement of loans by corrupt regimes who engage in outlandish financial mismanagement[18] of the loan facilities which benefits hardly trickle down to the local population.[19]

The attempts by Nigerians to resist any further lending arrangement proved abortive, throwing question about people's right to economic self-determination and the IFIs commitment to the respect of peremptory norm of international law. From a *TWAIL* point of view adopted in this thesis, the sovereign debt is nothing but bondage created by the IFIs, which can easily be avoided if the institutions, as well as the state officials, will be held accountable to the rules of international law, in this case, the right to economic self-determination. The general agreements between the international financial institutions and their member states are 'treaties' in the broad sense of the term, as both parties possess international legal personality, as a matter of law. Therefore, the contractual terms cannot void the right to economic self-determination as a norm of international law.[20]

Research Gaps and Contribution –Moving from Political to Economic Right of People

Research on the IFIs and their lending relationship with Nigeria over the past years are typically dominated on two fronts -1) the impact of the lending policies on the national economic growth. 2) And the social challenges of the policies. While the effects of the lending conditionality on the national economic growth and social cohesion were widely popular in the literature, debate regarding the debt bondage and the neo-colonial structures within the lending process and structures were not given much attention. This deficit creates a gap regarding the people's right to economic self-determination vis-à-vis the sovereign debt conditions. A big gap exists between the claims on the violations of economic self-

[18] Tan, C. (2010). The New Disciplinary Framework: Conditionality, New Aid Architecture and Global Economic Governance. *International Law, Economic Globalization and Developing Countries, J. Faundez and C. Tan, eds., Edward Elgar*. Pp 112-137

[19] *Ibid*

[20] Head, J. W. (1996). Evolution of the Governing Law for Loan Agreements of the World Bank and other Multilateral Development Banks. *American Journal of International Law*, *90*(2), 214-234.

determination by the IFIs lending conditionality and the IFIs counterclaims and problematisation of the debt crisis to internal socio-economic setup. This study fills this gap by providing a nuanced analysis of the patterns of the dependency and subjugation that characterised the current sovereign debt operations akin to the historic colonial economic orientation. The study provides a critical analysis using empirical data on how the IFIs lending conditionality crushed the national economic plans and make the State subservient to external control. Accordingly, the finding of the study contributes to filling the theoretical and empirical gaps in the literature and the ongoing debate on the application of the right to economic self-determination in the current global economic order.

Within the legal framework of self-determination, the exercise of the right has an international aegis against states and international organisations who are expected to safeguard the right to self-determination in compliant with the resolution of the United Nations Charter. However, one of the significant gaps in the contemporary right of economic self-determination has been the lack of comprehensive legal regulations against the growing level of influence and relentless suppression of national economic policies by international organisations, operating outside the state structure, but having significant bearing over the exercise of the right to economic self-determination.[21] The lack of practical legal order against the new global power's suppression of national economic policies defeats the essence of self-determination and decolonisation. The international financial institutions' push for globalisation has proven increasingly inimical to economic self-determination, as argued by Stiglitz, governed in manners that are undemocratic and have been detrimental to developing countries, especially the poor within those countries.[22] The absence of countervailing international legal checks and balances causes the people's right to self-determination to be significantly debased. Although several proposals were made in dealing with the current international sovereign debt crisis, most of the proposal, however, focused mainly on contractual approach to facilitate reorganisation and restructuring of debt in a way that will make payment easier for debtors on the one hand and secure the interest of the financial creditors on the other hand. One proposal, advocated by the U.S. Treasury Department, was the inclusion of collective action clauses by the lender in their debt instruments as a method of dealing with potential debt restructuring. The existing gap in those proposals is that

[21] Stiglitz, J. E. (2002). *Globalization and its Discontents* (Vol. 500). Norton: New York.
[22] *Ibid*

nothing has changed, from the borrower's position over the last decades, and the debt crisis is becoming a vicious circus with the same results.

This study proposed a solution to the sovereign debt that can be achieved by examining the issue in the context of people's right to economic self-determination of the debt recipient country. The study contributes by extending the work of TWAIL scholarship proposing legal counter-hegemonic guidelines to the IFIs hegemonic lending operations that stifle third world economic self-determination. The point in the analysis of TWAIL is that the sovereign debt is a neo-colonial force which solution only comes from giving the countries their right to economic self-determination. The contemporary struggles and claims for self-determination are not always typical of the nineteenth and twentieth-century European colonial power involving political domination and territorial conquests. After a brief moment of the initial hopes of decolonisation, the post-colonial struggles moved from political independence to economic self-determination, in particular, control over wealth and resources.[23] The *TWAIL* approach in this study makes a strong case for the extension of the meaning of colonisation beyond the saltwater theory to contemporary neo-colonial issues. The gap created in the saltwater colonial theory and the neo-colonial claims continues to pervade discussions about self-determination today, especially with the unprecedented rise in operations of international economic governing institutions. Despite the growing claims of economic neo-colonialism, in many cases, the attempt to question the functions of the international organisations that look to impinge economic self-determination is being overshadowed by the general assumption that political independence is the ultimate goal of self-determination. The General Assembly is yet to pronounce neo-colonial economic subordination in the framework of the prohibition of colonialism under international law despite economic subordination being the core of the allegations of the emerging challenges of neo-colonialism.[24]

The TWAIL recognised the struggle for power and dominance as a constitutive element in the global economic order. Therefore, the colonial experience is not a temporary thing that is guaranteed to disappear with the mere declaration of political independence. The discussion on economic self-determination is particularly crucial because, in present-day, the freedom of nations is much more threatened by economic limitations than by the dangers

[23] Katona, D. (1998). Challenging the Global Structure through Self-Determination: An African Perspective. *Am. U. Int'l L. Rev.*, *14*, 1439.

[24] Hébié, M. (2015). Was There Something Missing in the Decolonization Process in Africa?: The Territorial Dimension. *Leiden Journal of International Law*, *28*(3), 529-556.

of military domination. As the UN expert Cristescu,[25] in 1981, asserted that although the traditional form of colonialism is said to have been terminated, however, several other forms of imperial power continue to dominate weaker countries in the post-colonial economic and political relationship. The neo-colonial powers employ various methods and techniques to levy, dominate and subvert the general economic and political will of the newly independent nations.[26] The continuous exploitation of former colonial territories by the metropolitan powers and the systematic control, especially of the economic sector, became a big challenge for the newly independent states. Thus, without countervailing checks on modern economic hegemony, political self-determination is virtually useless to collective individuals. It is therefore ripe for international law development and shifts its focus onto developing ways to tackle economic neo-colonialism. This study seeks to extend the TWAIL pursuit for solutions to the legal challenges of the third world's economic self-determination and economic autonomy from within and outside the frontiers of states.

Research Aim and Objectives

This study aims to explore how IFIs lending terms and conditionality affects the application of the right to economic self-determination in Nigeria and evaluate the role of international law in contemporary sovereign debt bondage. To achieve the aim, this study sets its objectives as follows.

- To examine the nature and scope of the right to self-determination under contemporary international law.
- To investigate the sovereign debt relationship and the mode of implementation of various lending conditions in Nigeria.
- To evaluate the role of international law and the potential legal solutions on the application of the right to economic self-determination in the context of contemporary sovereign debt.

Research Questions:

Main questions

[25] Cristescu, A. (1981). The Right to Self-determination: Historical and Current Development on the Basis of United Nations Instruments (Vol. 404). New York: United Nations.
[26] *Ibid*

1. How does the IFIs economic lending terms and conditionality affect independent economic decision-making, collective aspirations and people's economic self-determination in Nigeria? and
2. In what way(s) can the law safeguard people's right to economic self-determination in the context of sovereign debt bondage?

Research Methodology

In pursuit of the research aims and objectives, this study explores the social world using qualitative case study methodology. The research methodology represents the overall toolbox containing research methods used to address the problem and provide answers. The qualitative data collection method was conducted under clear methodological guidelines, suited to the ontological and epistemological approach, data collection and analysis. The methodology accommodates both empirical as well as a doctrinal legal approach to exploring and collecting different sources of data used to construct meanings and interpretations of the study phenomenon. The doctrinal method entails a normative legal approach primarily concerned with a detailed and systematic analysis of the rules governing the law of self-determination, the relationship between the rules, gaps and perhaps future developments. The legal analysis serves as a starting point from which the research identifies the most relevant laws of self-determination before analysing it in a more abstract manner. The legal analysis involves examining sources of law of self-determination, including the international treaties and conventions, regional as well as national legislation. For the empirical approach, it aimed to generate original evidence through an inductive approach, which best explain the contextual meanings and impacts of the sovereign debt conditionality on people's right to economic self-determination in Nigeria. Qualitative methods were used to collect and ascertain the thoughts, feelings, and experiences of research participants, which enable the development of an understanding of the study phenomena.

The data collection method adopted includes an in-depth interview and observation to obtain local insight and point of view used to ascertain the impacts of the terms and conditionality in Nigeria. Some of the sampling techniques used in identifying and selecting the participants include purposive sampling and theoretical sampling. The research adopted a thematic analytical method, which focuses on making sense of the collective and shared meanings across the dataset relating to the process of accessing loans in Nigeria including the

level of public engagement, mandate and voluntariness. The process involves inductive reasoning of making observations and identifying the sequence of which the topic is talked about and the recurring themes. From the recurring themes in the data, a pattern of meaning will emerge that provides answers to the research question being explored. Other Secondary sources are also used in the research, which includes books, journals, and other relevant publications. These sources are used to evaluate the existing literature on the debates, commentaries, and controversies surrounding the research topic. The secondary sources are primarily materials available in libraries and online. The techniques are designed and carefully followed, as will be discussed in full details in a subsequent chapter (five).

Structure of the Thesis

The thesis consists of seven chapters.

Chapter 1: The first chapter provides the theoretical and conceptual framework of the study, which clarifies the interrelated concepts and theories underlying the general research assertions. The framework chapter guides and defines the problem of the research, showing the relationships between concepts, ideas, or variables to be studied. It covers the Third World Approach to International Law, the principle of self-determination, neo-colonialism and sovereign debt conditionality, which represents the major parts of the research. A comprehensive synthesis of the literature review in the next chapter should complete this section.

Chapter 2: The second chapter of the study reviews the existing literature on the international law principle of self-determination. The chapter reviews the relevant debates, commentaries and contributions regarding the international law principle to self-determination. The review adopts a critical approach to examining the related discussions and arguments in a logical order. The critical review provides a comprehensive overview of self-determination in the colonial and post-colonial era and evaluates the different perspectives and understanding of the content of the right to self-determination.

Chapter 3: The third chapter of the study provides the essential link between the discussion on the right to economic self-determination to the current global economic order and the various discussions on the international financial institutions and their lending activities. The chapter reviews and identify the theoretical and practical gaps in the

application of the right to economic self-determination in the current global economic order, and in particular, in the context of the IFIs lending terms and conditionality.

Chapter 4: The fourth chapter of the study discusses Nigeria's sovereign debt challenges as understood within the socio-legal context of the lending terms and conditionality. The chapter discusses the economic reform plans set by the financial institutions in Nigeria as part of the sovereign debt condition to examine the reforms and provide the legal context and historical evidence of the impact of the policies on the rising claims of self-determination and national restructuring. The chapter traces the history of the social and political organisation of Nigeria before the colonial project, to the colonial and the post-colonial era and contextualises the subordinate role played by the State in shaping the destiny of the territory in the context of contemporary sovereign debt conditionality.

Chapter 5: The fifth chapter of the study situates the study within a particular methodological tradition and provides a detailed description of all aspects of the design and procedures of the study. The chapter discusses the qualitative research methodology comprising of the ontological and epistemological approach of the research, the data collection methods and techniques applied in addressing the research questions.

Chapter 6: The sixth chapter of the study presents the findings of empirical research. International financial institutions often make the conferral of financial credit to a country dependent upon its implementing certain imposed policies, or a commitment to conducting itself in specified ways. The focus of the chapter is reporting the specific data analysis on the empirical study in Nigeria about the socio-legal impact of the sovereign debt conditionality on democratic, participatory right and concerns regarding the political organisation of Nigeria. The findings reflect the distinctive insight and local knowledge of nationals presented objectively, (without researchers' speculation or judgement) and reduced into a coherent report to make sense of the stories on the issues regarding the lending arrangement. Whether or not particular lending arrangements are justified cannot be determined in advance of such exploration.

Chapter 7: The last but not the least chapter synthesize and discuss the study findings in light of the research questions and conceptual framework. The chapter discusses the alignment of international financial institutions policies with international law and the human rights regime to promote the interest of IFIs in expanding their roles through sovereign debt conditionality. The chapter provides the study's TWAIL counter-hegemonic approach to the

new forms of neo-colonial economic oppression and the denial of the debtor's ability to exercise its right to economic self-determination. It provides an opportunity to make a worthwhile contribution to the overall arguments in this study by illustrating that the concept of oppression has expanded, making a case for the role the international law of self-determination can play.

Conclusion: The concluding section of the study presents a set of concluding remarks and recommendations. The recommendations suggest policy and practice based on the findings, providing specific action planning and next steps.

1. Chapter One: Theoretical and Conceptual Framework

This chapter discusses and clarifies the framework of the research and the interrelated concepts and theories underlying the general research assertions. The framework guides and defines the structural arguments and the theoretical grounding of the study covering the theoretical construct of the Third World Approach to International Law, the concept of neo-colonialism and sovereign debt conditionality, which represent the major parts of the research. The chapter contextualises and provides the foundation to the study of international sovereign debt conditionality and the assertion that it constitutes a form of neo-colonialism controlling the economic affairs of the debt recipient states, which undermines their right to economic self-determination. The framework chapter aims to make the research findings more meaningful and in line with the general theoretical constructs in the research field. The chapter proceeds by first setting out the theoretical underpinning of the *TWAIL* approach to the study, neo-colonialism, sovereign debt conditionality and the interpretation of the concept of self-determination as it relates to the research topic. The theoretical framework sets the tone for the twofold study aims. Firstly, to explore the effect of sovereign debt conditionality and the role of international law in the application of the right to economic self-determination. And secondly, to propose a counter-hegemonic legal solution to the application of the right to economic self-determination in the current global economic order.

1.1. The Third World Approach to International Law (*TWAIL*)

The Third World Approach to International Law is an intellectual movement that gathers different strands of scholarship that shares a sensibility and political orientation committed to addressing the inequality and injustice of the international political order.[27] The *TWAIL* emerged as a subgenre in the international legal scholarship as part of the more general trend towards post-colonial theory and the legal intellectual arguments advanced by the Critical Legal Studies and New Approaches to International Law movements.[28] The approach has evolved considerably over time, sharing an intellectual commitment to exposing the economic, social and political opposition to the mainstream international law and the

[27] Bianchi, A. (2016). *International Law Theories: an Inquiry into Different Ways of Thinking*. Oxford University Press. Pp207-226

[28] Haskell, J. D. (2014). Trailing TWAIL: Arguments and Blind Spots in Third World Approaches to International Law. *Can. JL & Jurisprudence*, *27*, 383.

positivist conception of the neutrality and objectivity of the law.[29] The *TWAIL* reveals international law as the principal language in which domination is coming to be expressed in the era of globalization.[30] The approach condemns the reproduction of colonial structures and forms of domination of the metropolitan power to the detriment of the less developed countries, whether via the formal colonial system or contemporary forms of neo-colonialism.[31] The analysis of power structures and the commitment to integrate critiques of neo-liberal economic restructuring to the legal scholarship were at the centre of the TWAIL project, and the emphasis is on, foremost, the desire to rid the international system of the lingering vestiges of colonialism.[32]

The search for a post-hegemonic global order, which started during the period of decolonization from the 1950s through the 1970s, resulted in the increasing activism of the *TWAIL II* in the 1990s that will inspire a more just global order.[33] The two important issues to emerge from this was, firstly, the colonial experience has made former colonial territories actively sensitive to the international political and economic order and power relations between states and international organisations.[34] Secondly, it is the actual ongoing neo-colonial experience of peoples and not the inherited colonial legal order that shape and determine the interpretive prism through which rules of international law are evaluated.[35] To the *TWAILs*, although international law guarantees its universal neutrality, however, it has promoted the selective application of the law especially in areas of international economic law and global power structure including the application of people's right to self-determination. Although the international law currently supports ex-colonies right to self-determination, however, once free of colonial rule, the newly established states become shackled by the remnants of colonial rules and neo-colonial rules contained in the international law. This includes, for example, the territorial borders drawn with little respect for the distribution of ethnic groups. The ex-colonial territories, therefore, face a very slippery slope in dealing with the right to self-determination that does not disrupt the colonial borders.

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[29] Bianchi, A. (2016) 27

[30] Chimni, B.S. (2006). Third World Approaches to International Law: a Manifesto. *Int'l Comm. L. Rev.*, *8*, p.3.

[31] Bianchi, A. (2016) 27 Pp207-226

[32] Fidler, D.P. (2003). Revolt Against or from Within the West? TWAIL, the Developing World, and the Future Direction of International Law. *Chinese Journal of International Law*, *2*(1), pp.29-76.

[33] *Ibid*

[34] *Ibid*

[35] Anghie, A. and Chimni, B.S. (2003). Third World Approaches to International Law and Individual Responsibility in Internal Conflicts. *Chinese Journal of International Law*, *2*(1), pp.77-103.

Like the Third World states on which it focuses, the *TWAIL* is not a monolithic school of thought; the approach evolved through different phases.[36] The first phase (which is more oppositional than reconstructive) coincides with the struggle for decolonisation, the effort to free the ex-colonial territories from the shackles of colonialism and ensure autonomy and sovereign equality of the newly independent states.[37] Many of the first generations of TWAIL scholars, such as Mohammed Bedjaoui, Georges Abi-Saab and Wang Tiya are not just academics, but active leaders in different capacities. The second phase, starting in the late 1990s, *TWAIL II* scholars (a Harvard graduates school initiative) set out to investigate new forms of domination and ways to reconstruct and reform the current international system dominated by the liberal world order.[38] The *TWAIL II* scholars (such as Antony Anghie, B.S Chimni, Makau Mutua and Obiora Okafor among others) argued that, notwithstanding the success of the decolonisation process, it became apparent that independence and sovereignty would not suffice to free the ex-colonial territories from the shackles of dependence and colonialism. The newly independent states fall into the trap of indirect colonial rule by the western countries or institutions either via intrusive aid or via development policy or more simply via the exploitation of the feelings of awe to former colonial powers. The power of the multinational institutions came to the fore and became the object of controversy.[39]

This study adopts the second phase *TWAIL II* approach that has an ambivalent posture towards international law, regarding its double-edge usage either negatively to perpetuate inequality or used in a good way to promote solutions to the world injustice. Thus, international law can help or hinder the application of self-determination in the less developed and ex-colonial territories in the context of financial debt bondage. The *TWAIL II* approach provides a useful background to frame the stances taken in the study and the attempt to offer an alternative normative framework on the practical application of the law of self-determination in the current global economic order. The *TWAIL* orientation to the study of international law is used as an alternative mechanism for understanding the current global economic order and the domination of the political, economic and legal rights of former colonial states and peoples to determine their destinies free from external powers.

[36] Okafor, O.C. (2005). Newness, Imperialism, and International Legal Reform in our Time: A Twail Perspective. *Osgoode Hall LJ*, *43*, p.171.
[37] Bianchi, A. (2016) 27. P207
[38] *Ibid*
[39] *Ibid*

1.2. The TWAIL Political Orientation and the Common Theme of Neo-colonialism

The concept of neo-colonialism explains the relationship between the global centre and the former colonies and the continuation of colonial rule in the ex-colonial territories based on the common goal of economic exploitation. The term was borrowed from the school of dependency theory that was popularized in the 1960s by several third- world Marxists such as Andre Gunder Frank, Giovanni Arrighi, and Samir Amin[40] among others. The institutionalisation of the decolonisation process ostensibly intended to end the colonial rule in all colonial territories ushered in enormous hope for states and peoples looking to exercise their right to self-determination, yet failed to live to the former colonial territories' dream of full political and economic independence. Although there was the renunciation of the colonial territorial expansion over the nineteenth and twentieth centuries, nonetheless, the ex-colonial territories soon found themselves in the trap of neo-colonialism that extended the original colonial goal of economic expansion and domination.[41] The Free-trade system is deemed as part of the general recreation of imperialism and the transition from colonial rule to informal control within the formal empire.[42] The introduction of free trade policy came as the British foreign policy designed to promote economic power and expansion through a global free-market system.[43] Inspired by Adam Smith, (among other eighteenth-century economists) the essential feature of free-trade entails the operation of a global market structure, where states scramble for raw material sources and investment outlets.[44] The neoliberal economic model was followed throughout the globe and operates under globalisation as the driving force for world integration.[45]

The concept of neo-colonialism forms the TWAIL framework for explaining the dialectical relationship between the ex-colonial territories and the historical legacy of economic domination. The concept describes the cause of political and economic dependency in the less developed countries and ultimately influences the TWAILs reformist agenda that appeals to the liberation of the ex-colonial territories countries from economic dependence beyond the purported decolonisation. For third world states, the national liberation movements of the 1950s brought enormous hope and renewed aspirations for the attainment

[40] Rao, N. (2000). "Neocolonialism" or" Globalization"?: Postcolonial Theory and the Demands of Political Economy. *Interdisciplinary Literary Studies*, *1*(2), pp.165-184.
[41] Hodgart, A. (1977). *The Economics of European Imperialism*. Hodder Education. Edward Arnold. P5
[42] *Ibid*
[43] *Ibid*
[44] *Ibid* p8
[45] *Ibid* P55

of their political and economic independence. The period beginning in the late 1950s and extending into the early 1960s was a time of great promise as political independence was finally declared.[46] Several decades later, it is difficult to remember the optimism energizing the global decolonization movement. This underpins the long-standing argument that long after the process of decolonization, the influence of Colonial powers persists over the former colonies using new agencies, structures, and relationships.[47] Former colonial territories only achieved political independence but remained economically, and socio-culturally bonded to colonial powers.[48] In other words, colonialism continues its life in various subtle forms in the post-colonial era.[49] Except for a few states, most of the former colonies in the less developed countries account for the states currently struggling with unending territorial and ethnic secessionist wars and developmental challenges despite the tremendous natural wealth and resources.[50] To explain this paradox, the concept of neo-colonialism examines why so little of the emancipating power of the decolonization movement has materialized into economic growth and prosperity in the former colonies.

The neo-colonialism concept emerged with a perspective suggesting the structural relationship between former colonies and their masters continuously obstruct not only the development of the former by the later but also the attainment of full political and economic independence of the colonies. The concept became more popular when the leaders of newly independent states began to suggest the lack of meaningful political and economic independence and self-reliance.[51] Kwame Nkrumah develops the idea that the former colonizing powers have retained control and power over the states and economies of the ex-colonies. Although formal colonialism has ended, and the new African State is sovereign in theory, in reality, its economic system and thus its political policy continues to be directed from outside.[52] Nkrumah pointed to the effect of neo-colonisation on the struggle to emancipate former colonial African territories from the shackles of colonialism and suggested, therefore that their newly acquired political independence must be accompanied

[46] Morris-Jones, W. H., & Fischer, G. (1980). Decolonisation and After: the British and French Experience. *VRÜ Verfassung und Recht in Übersee*, *14*(1), 76-78.
[47] Deinla, J. S. (2014). International Law and Wars of National Liberation against Neo-Colonialism. *Phil. LJ*, *88*, 1.
[48] Rahaman, M. S., Yeazdani, M. R., & Mahmud, R. (2017). The Untold History of Neo-colonialism in Africa (1960–2011). *History Research*, *5*(1), 9-16.
[49] Qiao, G. (2018). Introduction to a Critical Response to Neo-colonialism. *CLCWeb: Comparative Literature and Culture*, *20*(7), 1.
[50] Saito, N. T. (2010). Decolonization, Development, and Denial. *Fla. A & M UL Rev.*, *6*, 1.
[51] Maekawa, I. (2015). Neo-Colonialism reconsidered: A case study of East Africa in the 1960s and 1970s. *The Journal of Imperial and Commonwealth History*, *43*(2), 317-341.
[52] Rao, N., (2000). 40.

by the total liberation from economic domination and exploitation which kept former colonies under the iron curtain of neo-colonialism.[53] The African leaders, meeting in the All-African People's Conference held in Cairo in 1961, aired their concerns that independent African states had become the victims of an indirect and subtle form of domination by colonial powers.[54] This subtle form of domination of the neo-colonialist has permeated the corridors and every comer of the international economic and political setup. Different forms of political, economic, social and cultural interactions between the less developed countries and the metropolitan powers in the world stage have been levelled as neo-colonialism.

The political orientation and common theme of neo-colonialism integrated into this study seek to align the claims by the proponents of the concept into the general *TWAIL* reform objective of international law and the right to self-determination in particular. However, the delineation of the contemporary neo-colonial links has always posed a challenge from the International law point of view. However, the discussion of neo-colonialism, as derived from the vantage point of the former colonial people, has become a common theme in the international law debates and the UN's wider goal of promoting international peace and security based on equal rights and self-determination. The neo-colonialism concept exposes the various neo-colonial links established by colonial powers during and after the colonialism colonial era, which continue to shape the direction of several international laws and conventions in the post-colonial period.[55] Like the broader dependency theory entails more of the economic relationships between the developed versus less developed or metropolis versus peripheries and the general assertion that economic structures are responsible for the underdevelopment of the periphery, [56] the neo-colonialism stresses the asymmetrical relations in terms of political and economic sovereignty and independence of former colonies. In other words, the concept of neo-colonialism underpins the views that although the newly independent states have all the outward trappings of international sovereignty, in reality, their economic and political affairs are dictated from outside.[57] One of such cases is the use of financial aid to control and influence the affairs of the recipient state.[58]

[53] Nkrumah, K. (1966). Neo-Colonialism: The Last Stage of Imperialism. 1965. *New York: International*.
[54] Maekawa, I. (2015). 51
[55] Gary, B. (1998). Globalization Confronting Fear about Open Trade.
[56] Maekawa, I. (2015). 51
[57] Nkrumah, K. (1966). 53
[58] *Ibid*

The parameters of neo-colonialism include the economic and other subtle influences that involve taking advantage of the weakness of the newly decolonised states to achieve economic, political and cultural benefits. However, the use of neo-colonialism in this study does not seek to encompass all forms of (cultural and educational) neo-colonialism instead the study identifies two characteristics of neo-colonialism, that is, the political and economic power asymmetry as the central issues of discussion. The language of the United Nations resolutions, especially UN Resolution 1514 On the Granting of Independence to Colonial Countries and Peoples, not only defined the subjection of peoples to foreign domination and exploitation as against the purpose of independence and sovereign rights of the decolonisation.[59] Resolution 1514 in premonition of possible future post-decolonisation conflicts, warned against the continued validity in legal terms, of the former territorial frontiers from the colonial era in the post-decolonisation context.[60] It stated that all peoples have the right to self-determination, and this necessarily includes the right freely to determine their political status and freely pursue their economic, social and cultural development. The conclusion here is the legitimacy of any political process, and control of economic affairs rests in the hands of sovereign states. Anything kind of external control against the general wish of the local population can be viewed as neo-colonialism.

The central neo-colonial theme in this study is the general idea of international financial institutions vigorously promoted neoliberal economic policies and governing laws imposed on an unwilling state by creditors such as the IMF and World Bank. The expansion of international organizations functions after the Second World War and the emergence of globalism as an ideology are some of the fundamental features of neo-colonialism. The development of international financial institutions policies on a global scale came with a social transition to a system in which an international institution directly controls citizens. It also comes with it a degree of social homogenization and economic domination by large corporations and international institutions. The imposition of international economic policies that divest local populations of meaningful participation by shifting decision-making into the hands of international organisations constitutes significant neo-colonial challenges that defeat the purported goal of self-determination and decolonisation of the former colonial territories. These challenges operate as a global agenda for development set in the name of globalisation. Hence, the increased control over the political economies of states of supranational

[59] UN Resolution on the Granting of Independence to Colonial Countries and Peoples 1514 (1960)
[60] *Ibid*

organisations, the international economic and financial organisations (such as the World Bank) is in respect of self-determination legally problematic.

The international financial Institution's global economic hegemony promote the construction of an international order around multilateral institutions and structural economic and political alliance that are often seen by critics as undermining national democracy through global governance. Multilateralism involves the coordination of relations among the comity of states in line with a set of agreed rules and principles that entails a reduction in policy autonomy and constraints on the State's freedom of action by the agreed-upon rules and regulations.[61] This practice has become prominent in world politics since the end of World War II, as manifest in the proliferation of multilateral economic organisations such as the IMF and World Trade Organisation, drawing together state parties into formal, treaty-based agreements that specify certain commitments and obligations. A state's willingness to agree to those treaties-based agreements will determine acceptance of the approved policies that will shape its internal policy, but also, in exchange, expecting other states to do the same.[62] What makes this idea a problem is a fact that often states cannot exercise power effectively within their national arena and the organization of the units is controlled by a few big power states and corporations. This often results in highly unequal bargain power and a chance for the powerful states using their power to dominate and reject the free-market policies to its borders in full force through subtle protectionist policies despite the neoliberal theories of international order promoting "an 'open' and 'liberal' international economic border.

While the proponents of neo-colonialism present their arguments of globalism viewed as a neo-colonialism and the biggest impediment to the international law principle of self-determination, others have different views. In his defence of the idea of globalism and global principles, Sen, (2012) suggested global civilization to be a world heritage, not just a collection of disparate local cultures. When a modern mathematician in Boston invokes an algorithm to solve a challenging computational problem, she may not be aware that she is helping to commemorate the Arab mathematician Mohammad Ibn Musa-al-Khwarizmi, whose name al-Khwarizmi the word algorithm is derived. Like algorithm, the term algebra is derived from the title of a famous book Al-Jabr WA-al-Muqabilah. Thus, the chain of intellectual relations of Western science links to a collection of distinctly non-Western

[61] Ikenberry, G.J. (2003). Is American Multilateralism in Decline?. *Perspectives on Politics*, *1*(3), pp.533-550.
[62] *Ibid*

practitioners. To see globalization as merely Western imperialism of ideas and beliefs would be a serious and costly error and the confounding of globalization with Westernization is not only historical, it also distracts attention from the many potential benefits of global integration. However, the specific drive of this study is to examine the claims of neo-colonialism in the contest between national policy-making and economic interest against the universal free-market policies governed by global financial institutions. The issues addressed are the loan arrangement with financial creditors containing an agreement to implement free-market policies over and above the national interest and economic self-determination of people within national borders.

1.3. Sovereign Debt Conditionality as Neo-colonial Economic Conquering Tool

After decades of sovereign debt crisis and backlash in the less developed African countries, the operations of the IFIs have continued to fit well with the description of neo-colonialism. Several critics from within and outside the less developed characterised the sovereign debt as a key component of contemporary financial bondage and the principal example of functioning neo-colonialism, with the institutions operating as an agent of metropolitan powers in promoting systematic economic hegemony.[63] The institutions have been playing a pivotal role in less developed countries' economies, often imposing policies that affect local institutions and consolidate political and economic control. The penetration of metropolitan powers into the political and economic affairs of third world countries is achieved through the free-market policies imposed as an intrinsic part of the lending conditionality of the international financial institutions.[64] The adoption of neoliberal economic policies as lending conditionality has become a controversial issue that continues to grow between international financial institutions and third-world countries. The multiple layers of lending terms and conditions have strengthened the economic dominance of the financial creditors. Despite the debt's recipient countries have to pay back with interest that was more than perhaps the amount they borrowed,[65] the states have to fashion their economic and political institutions as dictated by the financial creditors. The lending conditionality

[63] Chimni, B. S. (2012). Capitalism, Imperialism, and International Law in the Twenty-First Century. *Or. Rev. Int'l L.*, *14*, 17.
[64] Gil, Y. R. (2005). Critical Conversations on Nationalism, Self-Determination, Indigenous People, Globalization and Colonialism: Reflections on the South-North Exchange, 2004 & 2005. *Fla. J. Int'l L.*, *17*, xiii.
[65] *Ibid*

imposed by the dominant IFIs, that is, the World Bank and the IMF represent some of the typical relationships characterised as neo-colonialism.[66]

The modern-day sovereign debt crisis has become a complex multi-faceted economic, political and legal issue, which can be analysed in different ways. In discussing the sovereign debt relationship, the first task is to map out the scope. One important approach is to distinguish, initially, between official sovereign debt and commercial debt. While official sovereign debts, on the one hand, include those owned by sovereign states to fellow states or international financial institutions such as the IMF and the World Bank. Commercial debts, on the other hand, are those owed to commercial banks or other private lenders. The focus of this study is on the official sovereign debt agreements, entered between international financial institutions and sovereign states, which have at least *prima facie* legal validity as a bilateral or multilateral treaty between the parties. The study focuses on the sovereign debt conditionality imposed by international financial institutions as a condition *quid pro quo* to financial assistance that affects the national economic structures of the debt recipient countries. The conditionality is part of the legal arrangement for financial credit assistance, the IMF and World Bank incorporated in their article of agreement 5(3) in the form of financial lending terms and conditionality.

The lending policies encompass a chain of measures designed to reduce and transform the state economic intervention, with an increased reliance on market mechanisms and significant devaluation of the national currency.[67] They also include a shift in public-private ownership in the direction of more substantial support for the transfer of ownership and management of resources to private individuals and increased reliance on the private sector,[68] along with deliberate efforts to control inflation by limiting consumer demand. While there have been growing concerns over the conditionality that affects the Social welfare Rights of people; however, the most implicated is the right to self-determination that involves the right of all peoples to determine and pursue their economic policies freely.[69] From the financial institutions' point of view, the financial lending policies are nothing, but policies designed to help countries lessen their account deficit to more manageable proportions through the implementation of programs that will strengthen their balance of payments while maintaining

[66] *Ibid*
[67] Mosley, P., Harrigan, J., & Toye, J. F. (1995). *Aid and power: The World Bank and Policy-based Lending* (Vol. 1). Psychology Press.
[68] *Ibid*
[69] Saito, N. T. (2010). 50

their growth momentum.[70] In this regard, the World Bank described it as reforms of policies and institutions covering macroeconomic (such as taxes and tariffs), macroeconomic and institutional interventions, all designed to improve resource allocation, increase economic efficiency, growth potential and resilience to shocks.[71] These policy conditions are, therefore, a commitment that essentially serves to provide a safeguard that the borrower country will be able to rectify its macroeconomic and structural imbalance to be able to pay back the loans.[72]

In the absence of the State's tradable security, thus, the policies work as a substitute for security for receiving all or part of the funding. Moreover, conditionality is adjudged by the institutions to be necessary due to the lack of proper enforcement mechanisms such as courts that can sanction borrower countries in case of being in default. This will ensure and guarantee the commitment of the debtor country, making sure the right economic directions are taken. Therefore, the conditions are put in place to solidify and counter the tendencies that once the loan is received, the country may renege and give preferences to other issues rather than invest in the key sectors that will cure its recession.[73] Therefore, even when measures and reforms might be seen as mostly unpopular in the debtor countries, the conditionality is meant to curtail the actions of indebting states and prevent a large scale financial crisis and possible contractual agreements. However, from the standpoint of neo-colonial theorists, the IFIs sovereign debt conditionality creates legal bondage, subjecting the borrowing countries to legal obligations that allow little space for the indebting states to own and implement their policies.[74] Although financial credit equally serves as an essential tool in running the affairs of the State, yet, by most of the accounts from the less developed countries, the design of sovereign conditionality often results in extensive 'collateral damage' in developing countries. For the debt recipient countries, dealing with the multiple layers of sovereign debt conditionality is like opening Pandora's Box of serious complex legal, political and human right challenges.

Although both the government officials in most of the debt recipient countries and the representatives of the IFIs continue to maintain the view that the sovereignty and self-determination of indebting states are not under threat from the financial credit conditions,

[70] Weeks, J. F. (1989). *Debt Disaster?: Banks, Government and Multilaterals Confront the Crisis* (Vol. 2). NYU Press.
[71] Mosley P, Harrigan J, Toye JF. (1995). 67
[72] *Ibid*
[73] Sachs, J. D. (1989). Conditionality, Debt Relief, and the Developing Country Debt Crisis. In *Developing Country Debt and Economic Performance, Volume 1: The International Financial System* (pp. 255-296). University of Chicago Press. Pp. 255-296).
[74] Andone, I. and Scheubel, B. (2019). Once Bitten: New Evidence on the Link Between IMF Conditionality and IMF Stigma.

however, the fact that both IFIs and officials continue to talk about the state sovereignty and self-determination may itself be questionable. The World Bank, for example, is careful to say that all decisions about loans are reached in discussion with recipient governments. The study examines the sovereign debt conditionality law and neo-colonialism through the lens of international law principle of self-determination as people's right to pursue their economic, social, and cultural development freely without external directives. The study investigates the international financial conditionality that pervades discussions on the less developed countries' economic self-determination. The relevant type of conditionality referred to is identified as a conditionality arrangement tied to a myriad of hard and soft law obligations as well as coercive elements aimed at imposing exogenous reform without due recourse to people's choice. This includes any conditionality in which creditors design and determine local institutional structures and compliance standards that include withholding credit. Through the lending conditionality, the international financial organisations lay down their global agenda for development in the name of "Global Principles" that promote economic hegemony and neo-colonialism.

Intricately tied up to the question of conditionality is the issue of good governance and program ownership by the indebting country. Ownership of a program may be defined as the extent to which a country is interested in pursuing reforms independently of any incentives provided by financial creditors.[75] The question of ownerships have been extensively contested with critics of the lending conditionality raising the issue of the IFIs leveraging on the borrower country by not awarding the full amount of the loan at the beginning of the agreement, it is parcelled out, on condition of successful completion of the imposed programs or "good governance".[76] In this case, the indebting country would not be able to defect from the Institution's programs even in the face of unforeseen economic and social challenges because doing so will endanger future lending. The good governance reform joined the IFIs "structural adjustment" policy framework In the 1990s. The introduction of good governance condition by the IFIs is another crucial element of conditionality that strengthens the neo-colonial argument. Although the "Good governance" concept has become deeply enshrined in the IFIs lending policy, yet the concept eludes precise operational delineation. The commonly referred definition of the concept includes

[75] Drazen, A. (2002). Conditionality and Ownership in IMF Lending: a Political Economy Approach. *IMF Staff Papers*, *49*(1), 36-67.

[76] Kahler, M. (1992) "External Influence, Conditionality, and the Politics of Adjustment." The Politics of Economic Adjustment: 89-136.

references to the four principles of accountability, transparency, the rule of law, and participation. The flexible and imprecise definition of the concept works in favour of general acceptance. Despite the ambiguities that surround the term, governance has emerged as a crucial part of the agenda of the IFIs.

The "Good governance" initiative arrived at a moment when the legitimacy of the IFIs seemed to be threatened, and their lending policy records against people's human rights are widely questioned. The growing criticism of the IFIs lending policy records led the IFIs to jump to the front lines of multiple human rights and good governance missions.[77] Following the adoption of the new good governance mission by the IMF and World Bank, the financial credit recipient countries are expected to commit to the principles of multiparty democracy, the rule of law, respect for human rights and market economics, which proper implementation demands active surveillance. The extension of the IFIs lending conditionality to good governance, and thus active surveillance, has generated criticisms as an insidious encroachment by the 1FIs into a position of total dominance over developing-country governments.[78] The active surveillance on states compliance with good governance conditionality gives room for subjective judgments on the part of the IFIs, Who decide where and how to draw the line between good and bad governance. This sort of arrangement makes the IFIs good governance mission far too intrusive of country sovereignty, much beyond what external assistance should cover. Analyses of the new agenda focusing on governments to increase accountability, transparency, and good governance, to the exclusion of the lender, forms an integral part of the neo-colonial arguments of this study.

The growing criticisms of the IFIs sovereign debt bondage culminated in the UN General Assembly passing resolutions including Resolution 69/319 on Basic Principles on Sovereign Debt Restructuring Processes.[79] The resolution adopted nine principles that should underscore any sovereign debt restructuring processes to include: sovereignty, good faith, transparency, impartiality, the equitable treatment of creditors, sovereign immunity, legitimacy, sustainability, and majority restructuring. The issues investigated in this study are the purported tearing down of national regulations and the imposition of policies inconsistent with home-grown economic objectives and policies of governance.[80] In this case, the research

[77] Kapur, D., & Webb, R. (2000). *Governance-related Conditionalities of the International Financial institutions* (No. 6). UN.
[78] Thomas, C. (1999). 17
[79] A/RES/69/319 Basic Principles on Sovereign Debt Restructuring Processes 2015
[80] Drazen, A. (2002). 75

into the social context will be focused on the extent to which the country is interested in pursuing reforms that appeared to have contradicted the political and economic aspirations of the country. For economically fragile countries desirous of protecting their economy through different trade barriers and tariffs, the Institution's lending conditions such as trade liberalisation and privatisation will certainly be damaging in this circumstance.

1.4. Neo-colonialism and Anti-Colonial Struggle in the Ex-colonial African Territories

The European colonial conquest marked an important episode in the political, economic and cultural history of Africa and transformed the general political landscape of the continent.[81] The colonial rule varied according to the colonial powers, and the degree of resistance encountered in the colonies, with the British style of rule, for instance, differs from that of French or Belgium that are all varied through interlinked in their grand common theme of political influence and administrative control of the colonies domestic policies. By the mid-1940s, the great majority of African territories had experienced colonial rule.[82] With the exceptions of modern-day Egypt, Ethiopia and Liberia, most of the remaining states achieved independence in the 1950s and 60s. The continent now comprises fifty-four recognised independent states and two others -Western Sahara and Somaliland, whose independence is disputed. Most states came into being in almost a unique historical context of decolonisation.[83] The Africa independence came about as the colonial powers of Britain, French, Belgium, Netherlands, Portugal and Italy were confronted with a liberation movement that saw the decolonisation process launched under the United Nations. The process was launched based on the principle of self-determination which was laid down in the article 1 (2) and 55 of the Charter of the United Nations as well as the General Assembly resolution 1514 (XV) of 14 December 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples. The decolonisation gave the newly independent states' statehood and recognised them as members of the United Nations.[84]

Although decolonisation is seen as an important episode that ostensibly ended the colonial experience, however, decolonisation only managed to relieve little of the agonising

[81] Miege, J. L. (1980). The Colonial Past in the Present. *Decolonisation and After: The British and French Experience*, *43*.
[82] Allen, C. (1995). Understanding African Politics. *Review of African Political Economy*, *22*(65), pp.301-320.
[83] Young, C. (2018). The Heritage of Colonialism. In *Africa in World Politics* (pp. 9-26). Routledge.
[84] Tordoff, W. (2016). *Government and Politics in Africa*. Macmillan International Higher Education.

experience of the people from their colonial past. The shadow of the colonial past falls upon the contemporary state system in several critical features. The inherited colonial frontiers, for example, remain a crucial source of regional crises. With the principle of *uti possidetis*, states emerging from decolonization shall inherit the colonial administrative borders they held at the time of independence. This stand creates a genuine feeling of instability and dissatisfaction among groups in the new states political structure and opens the Pandora's Box for unending ethnic secessionist crises that plague the continent for years including the conflicts in Western Sahara, Eritrea, Sudan, and Southern Sudan and many more cases rooted in the artificial colonial borders.[85] Thus, the colonial legacies continue to have a significant impact on African regional economic and political organisation. While many African intellectuals are calling for the reconstruction of the borders, the colonialists and the indigenous elites opted for maintaining extant lines as the most feasible way of maintaining peace and stability.[86] The main challenge for accepting the colonial frontiers for the newly independent states has remained the endless search for genuine common identity mostly in the heterogeneous nations with diverse ethnic groups with different challenges and at different stages of social and political development. Nowhere was this challenge more serious than in Nigeria, which has been a complex heterogeneous country in Africa.[87]

The economic and political colonial legacies significantly shape the post-colonial African regional policies –both as an active channel of influence and as a negative point of reference. The colonial legacies meant that decolonisation only defuses the political tension in the colonial territories while retaining the organisation and economic structure in perfect shape.[88] Nowhere this is clear than the French colony where soon after the decolonisation, President Charles de Gaulle proposed a policy of French African community that would grant Francophone African states autonomy while retaining control over the significant sectors of defence, economy, strategic minerals and foreign policy. By 28 September of 1958, the African states through referendum voted overwhelmingly in favour of the proposal, except for guinea president (Sekou Toure) who decided to live in poverty than wealth without independence. Eventually, the transition from colonialism to cooperation was smoothed by bilateral agreement between the African states and the French in key economic, monetary,

[85] Young, C. (2018). 83

[86] Ratner, S.R. (1996). Drawing a Better Line: Uti Possidetis and the Borders of New States. *American Journal of International Law*, *90*(4), pp.590-624.

[87] *Ibid*

[88] Young, C., (2018). 83

foreign policy and technical assistance.[89] The French colonial economic control over most of the twenty states formally under the French rule despite being independent and separate entities demonstrates an excellent example of the unfinished story of economic colonisation and injustice in Africa.[90] Thus, the gaining of political independence did not result in the loss of real outside control over the territories. This move established a different level of connection with the past and dented the outcome of the liberation struggles.

The current explosion of ethnic identity and separatist crises that engulfed the ex-colonial African territories has exposed the post-colonial challenges and the enduring colonial exploitation creating massive distress within the countries.[91] The resurging ethnic and secessionist crises in ex-colonial African territories highlight the challenges and difficulties in solving the issues of resource control and the right to economic self-determination in post-colonial Africa. Nationalism, like other social terms, is a word that resonates with a number of different meaning. It is an inclusive and liberating force connecting various regions, dialect, custom, and helped to create a large, powerful nation-state, with centralised markets and systems of administration.[92] It proclaimed the sovereignty of people and the right to determine their destinies, in states of their own, according to their desires. In many cases, nationalism proved to be a decisive factor in overcoming political and economic dominance, and therefore, a driving force in the struggle against the neo-colonial economic subjugation afflicting the former colonial territories.[93] Historically, nationalism has played a significant role in post-communist Central and Eastern Europe, where it prospered economic modernization.[94] These experiences have reaffirmed the relative success of nationalism in bringing about significant economic reforms, though it had, in some instances, been overshadowed ominously by nationalisms that appealed to race, violence and the cult of the brutality of fascism.[95] Thus, the concept is neither value-neutral nor divorced from context, be it that of the political, social and cultural environment within which the word is used.[96]

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[89] Rothchild, D.S. and Harbeson, J.W. eds. (1995). *Africa in World Politics: Post-cold War Challenges*. Westview Press.
[90] *Ibid*
[91] Anghie, A. (2006). Nationalism, Development and the Postcolonial State: The Legacies of the League of Nations. *Tex. Int'l LJ*, *41*, 447.
[92] Smith, A., & Smith, A. D. (2013). *Nationalism and Modernism*. Routledge.pp1
[93] Anatol, L. (2006). Nationalism in the Contemporary World, 44 Russian Pol. & L. 6
[94] *Ibid*
[95] *Ibid*
[96] Motyl, A. J. (1992). The Modernity of Nationalism: Nations, States and Nation-states in the Contemporary World. *Journal of International Affairs*, 307-323.

Whilst nationalism essentially promotes nations and their self-rule, the current ethnic backlash within African states is distinctly different from nationalism prominent in part of Europe and other parts of the world.[97] The central distinguishing feature is found in the ethnic chauvinism that characterised most of European nationalism contrary to the anti-colonial tribal nationalism in the former colonial African territories. At first, the idea of nationalism in the former colonial African territories grew out of anti-colonial movements that were termed as pan-Africanism.[98] The dream of the former colonial African territories was the attainment of self-determination and liberation against alien domination. This dream continued as a new form of anti-neo-colonial nationalism began to appear as a struggle against the international economic order, this saw the emergence of the New International Economic Order (NIEO) sponsored by third world states. Nationalist liberation movements now count upon the right of self-determination to provide the basis for the people's fights against external directives in determining the legitimacy of political structure.[99] Although most African national liberation movements shared a pan-African vision and a principled rejection of colonial regimes for territorial independence and self-determination,[100] however, the pan-Africanist vision soon dissipates, and nationalist thought appeared to be replaced by tribal and religious identity.[101]

The newly found ethnic identities became a critical issue generating a lot of debates and discussions about its impact on the theoretical and practical application of African self-determination. Although the confounding pattern of African identity of tribalism has been negatively viewed as divisive, posing a danger to the consolidation of African states, however, the ethnic consciousness is, in most cases, a renewed struggle against the effect of neo-colonialism and development challenges in Africa. For African nationalism, the quintessence was and is anti-imperialism and modern neo-colonialism. It is a demand against, or a struggle against the historical experience of racial humiliation, exploitation, and domination.[102] Therefore, African ethnic Nationalism is always a reaction against the enduring colonial legacy and thus as long as neo-colonialism is in existence, ethnic nationalism continues. In Shivji's account, the present-day liberal paradigms and restructuring of the African state in the image of western liberal states brought back onto the

[97] Anatol, L. (2006) 93

[98] Leoussi, A. (2018). *Encyclopaedia of Nationalism*. Routledge.

[99] Summers, J. J. (2005). The Right of Self-determination and Nationalism in International Law. *Int'l J. on Minority & Group Rts.*, *12*, 325.

[100] *Erk, J. (2018). Will the North's Secessionist Winds Blow South? The Past, Present, and Future of Self-determination and Border Change in Africa. South African Journal of International Affairs, 25(2), 153-176.*

[101] *Ibid*

[102] Shivji, I.G. (2003). The Rise, the Fall and the Insurrection of Nationalism in Africa. Centre for Civil Society, Durban.

historical agenda, the national question, and nationalism in the form of anti-imperialism.[103] Thus, the resurging ethnic nationalist movements had more profound significance – the freedom to make their own decisions, against the multiple layers of economic and political subordination.[104] The hegemonic character of the current international financial lending system represents one of the most challenging aspects of the 21st -century political economy in Africa.

1.5. The *TWAIL* Reform Objective and Approach to Economic Self-determination

As more former colonial territories are going through a new phase of the neo-colonial challenge and contemporary economic domination and exploitation by multilateral corporations and international organisations, national resistance and self-determination are transformed into a radical form of anti-globalism and ethnic sentiment charge towards economic self-sufficiency. The new economic nationalism and its demands specifically around self-determination and an end to the control and dominance over their resources encapsulate the *TWAIL* derive for both theoretical and practical counter-hegemonic approach to international law. The *TWAIL* exposes the role of international law as integral to the imperial expansion that subordinated the former colonial territories and promoted the civilising mission of international organisations.[105] Thus, the reform and reconstruction of the mainstream interpretation of the international law principle of self-determination (as constrained to internal democratic and human rights) remain the essential discourse in the *TWAIL* literature. Like many other *TWAIL* projects, the approach to the study of self-determination in this study examines the role of the contemporary liberal democracy and international human rights regimes in the application of economic self-determination in the neo-colonial international economic and political order.

The principle of self-determination has now developed into a multidimensional principle that can be addressed from different perspectives, either as a human right, a principle of international law or as a principle of international relations. Depending on the peculiar disposition of the beneficiaries, its content, application and significance changes significantly, but most importantly, depending on which self it is taken to apply to. There

[103] Shivji, I. G. (1989). *The Concept of Human Rights in Africa*. African Books Collective. P4
[104] *Ibid*
[105] Mutua, M. (2000). What is TWAIL?. In *Proceedings of the ASIL Annual Meeting* (Vol. 94, pp. 31-38). Cambridge University Press.

have been several references to the principle of self-determination in different contexts, including the decolonization process, revolution movements, irredentism or unification of territories (such as the unification of western and eastern Germany), and secessionism. For a people under colonial rule or any form of alien rule or occupation, the principle denotes the right to establish an independent state of their choice or associate with an existing state.[106] For independent countries, however, self-determination means freedom from external interference in the administration of state internal affairs and protection from external threats and subversive activities. It could also denote the right of a state to recover sovereignty by obtaining full control over its natural resources through expropriation or nationalization of certain foreign assets (subject to the rules of international law), in other words, the permanent sovereignty of a state over its natural resources.[107] Self-determination could also be interpreted to mean the right of people within the sovereign state to elect and preserve its self-government. For minority groups, the principle entails the right to participation in the national government and the right to recognition of their cultural identity.[108] Disaffected groups with definite territorial bases may demand regional autonomy to exercise central authority over certain aspects of national life, but advocate local control over local administration or seek to separate from the parent state and to establish their government through secession.

The reference to self-determination in this study generally denotes a right against foreign interference and domination by international organisations in internal economic affairs.[109] Although closely related to the principle of sovereignty that denotes an undivided authority of states to enforce its law concerning all persons and property within its borders, self-determination, however, differs, as it does not specify a particular arrangement of either an independent territory, an autonomous region, a federation or suzerainty, or even full assimilation.[110] The principle of self-determination does not specify what the delimitation between states should be or what constitutes a state authority; it only requires the provision of the necessary legal, institutional and political guarantees that enable people to set up a government of their choice, which shall serve their aspirations and duly protect them from

[106] Alfredsson, G. (1996). Different forms of and claims to the right of self-determination. In *Self-Determination* (pp. 58-86). Palgrave Macmillan, London.
[107] *Ibid*
[108] *Ibid*
[109] Summers, J. (2014). *Peoples and International Law: How Nationalism and Self-determination Shape a Contemporary Law of Nations*. Brill.
[110] Bunick, N. (2008). Chechnya: Access Denied. *Geo. J. Int'l L.*, *40*, p.985.

external domination or subjugation.[111] The application of the right to self-determination may result in different outcomes such as decolonisation, the liberation of peoples under military occupation, and the pursuit of unrepresented or oppressed peoples (such as Bangladesh and Kosovo) denied meaningful access to government. Therefore, the reference to the right of self-determination in this study does not necessarily connote the broad principle of sovereignty, rather the prohibition against interference in the domestic affairs of states and subjugation of people in their given territory, including non-colonial territories. In this sense, the application of self-determination has to be centred on people's mandates and approval regarding the affairs of their government and their right to explore self-determination in pursuit of their economic, social and political aspirations that will contribute to their development.

The *TWAIL* approach in this study is driven by two primary interrelated objectives concerning the right to self-determination. The first objective is to analyse the dominant theoretical construct of self-determination in international law, that is, the liberal democratic and human rights theories of self-determination, (viewed in this study) as the creation of international law to perpetuate the operations of international institutions as agents of global good governance mission. The second objective is the reconstruction of an alternative legal solution for the promotion of the principle of self-determination. The international community under the United Nations has traditionally favoured the narrow application of self-determination primarily to colonial peoples and racist regimes. Although the UN played an active role concerning the decolonization process of the former colonial territories and the South African racist regime, however, aside from the cases of decolonization and the apartheid regime, the application of self-determination in contemporary international law is fraught with uncertainties. It is often seen as dysfunctional and inapplicable against the territorial borders of existing states. The post-colonial application of self-determination, as a matter of international relations, was viewed as capable of constituting a dangerous anachronism, which could bring in it, a chain-reactions of separatist claims leading to political chaos.[112] It follows, therefore, the existing structure of the international community at large dismissing the post-colonial self-determination claims in former colonial African territories. However, given the growing number of self-determination claims in the post-colonial world, it will be unrealistic to insist on the United Nations' practice of

[111] *Ibid*
[112] Alfredsson, G. (1996). 106

underestimating the issues at hand and restricting self-determination to colonial peoples. Hence, the pressing need for broader interpretations of self-determination and its application in the post-colonial era to minimize claims and reduce violent conflicts.

The move to place certain individual human rights under the protection of the international community, including the right to self-determination, to ensure more safeguard of the rights led to the idea of self-determination (as a human right) categorised into external and internal forms as regards to its application.[113] The internal and external application of self-determination was created to settle self-determination claims without disrupting the existing international order and territorial integrity of states. As a human right, Self-determination can be expressed internally through democratic means embodied in the civil and political rights and expressed at the external level through secession only in some instances of gross violation of human rights. Reflecting on the *TWAIL* general criticism of the international human rights regime, this study evaluates the findings of the social context to assess the application of internal self-determination in contemporary international law. The idea that the legitimate interests of groups be accommodated within the framework of existing States, only in extreme violations shall the external self-determination be recognised by the international community. This position was established in the landmark Canadian Supreme Court decision on the case of Quebec unilateral declaration of independence.[114] The Court distinguished the internal self-determination from the external self-determination, by holding that people have, as a first option, the right to enjoy their internal self-determination and only in circumstances where the internal right is disregarded and disrespected by the mother-state, may the people's right to external self-determination (break-off) accrue.

While reflecting on the application of self-determination as human rights, this study examines how contrary to the idea of self-determination bestowing people the right to pursue their aspirations, the human rights regime has plunged the less developed countries into the civilizing mission of neo-colonialists that undermines the objectives of self-determination against external subordination. The application of self-determination under the human rights regime plays into the hands of international governing institutions who set standards for human rights and decide for people on the premise of universal human right and good governance mission. In other words, self-determination is becoming somewhat anachronistic

[113] Miller, R. A. (2002). Self-determination in International Law and the Demise of Democracy. *Colum. J. Transnat'l L.*, *41*, 601.
[114] Re Secession of Quebec, [1998] 2 SCR 217.

as universal human rights are now defined and determined by external forces outside the purviews of nations and people's aspirations. The framing of self-determination as a right embodied in the civil and political rights by the international community created problems of being too vague and neglectful of human rights. For the civil and political right, neither a coherent set of laws nor a comprehensive mechanism of enforcement has been in place.[115] The ICESCR merely demands periodic reporting by the States regarding the measures and progress recorded in realising the rights enunciated in the Covenant. The ICCPR equally demands a similar reporting obligation, but also contains a facultative provision for an interstate adversarial procedure and under its First Protocol, again, makes provision for an individual complaint procedure.[116] The promotion of civil and political right also looks dismal without economic empowerment or in instances of denial of the right to profess and practice their culture and religion. The shift in the 20th century's international economic and political order of imperial military dominance to new economic warfare suggests that economic power, not military capability, is the coveted and feared weapon of the day.[117]

Although the principle of self-determination has evolved going through different shade of meaning and content,[118] the quintessential value of the principle is to remedy any form of domination even when it did not constitute a legal breach of human rights. A subordinate community under a sovereign rule of empires might not necessarily suffer gross violations of those rights considered as fundamental human rights by the international community for it to demand the right to govern itself freely without external directives. In this line, the application of Self-determination following the adoption of the principle in the UN Charters served to liberate People under colonial rule, not based on gross maltreatment, but based on the general idea of independence of political entities from external subordination.[119] The *TWAIL* anti-colonial project in this study addresses the new economic, political and legal form of bondage in the global economic order and domination. From its early adoption in article 1 of the UN Charters to the adoption of the principle by the UN General Assembly Resolution 1514 on the Granting of Independence to Colonial Countries

[115] Pullar, A. (2014). Rethinking Self-Determination. *Canterbury L. Rev.*, *20*, 91.
[116] Van der Vyver, J.D., 2003. The Right to Self-Determination and its Enforcement. *ILSA J. Int'l & Comp. L.*, *10*, p.421.
[117] Katona, D. (1998). 23
[118] Ghoshray, S. (2004). Revisiting the Challenging Landscape of Self-Determination within the Context of Nation's Right to Sovereignty. *ILSA J. Int'l & Comp. L.*, *11*, 443.
[119] Hannum, H. (1993). Rethinking Self-determination. *Va. J. int'l L.*, *34*, p.1.

and Peoples (1960),[120] the principle looked more effective in solving one of the severe issues of colonisation affecting the global order.[121] Hence, the contemporary economic domination which lies at the heart of the global order, taking the place of a colonial form of interference and persecutions of the past,[122] the question now is, can people legitimately claim their right to self-determination as a right to be free from the modern external economic domination in the form of a financial aid system? The interpretation of the principle of self-determination in this study as a principle regulating independent states is expedient to addressing the complex legal issues relating to global economic domination in post-colonial self-determination. In other words, the research addresses the current demands and agitations by various groups and states seeking to exercise full control over their internal and external right to self-determination.

The study challenges the mainstream interpretation and equation of self-determination to internal liberal democracy which has (in this study's viewpoint) weakened the power of self-determination as a means of fighting external aggression and limits it to a legal right constrained to state internal application. The conception of self-determination as internal affairs have little to do with the international setup, rendering the principle to have no real legal and political significance in addressing the economic, social and historical manipulation of neo-colonial nature. As the changing tide of international economic and political order exposed developing nations against economic exploitation, the less developed countries of the former colonial African territories seem to have no real legal protection against the neo-colonial weaponry of the modem world order.[123] In short, the notion bears several limitations preventing its potential benevolent use in the contemporary world. The point in this study of adopting *TWAIL* is to address self-determination as a liberating principle regulating the affairs of groups and the relationship between states and international organisation. This approach will avail the principle to address all forms of domination, either in the form of classical or modern colonialism and offer an alternative application of self-determination as an organising principle of international law that promotes human rights and curtails external foreign subordination. The perspective entails not only the political will of the people but the

[120] UN General Assembly, *Declaration on the Granting of Independence to Colonial Countries and Peoples*, 14 December 1960, A/RES/1514(XV), available at: https://www.un.org/en/decolonization/declaration.shtml (last accessed 28th March 2019)
[121] Katona, D. (1998). 23
[122] Cheru, F. (1989). The Silent Revolution in Africa: Debt, Development and Democracy. Zed Books; Harare, Anvil Press. Pp1-189
[123] *Ibid*

rights of states to determine their economic and social destinations. The *TWAIL* approach could help solve the problem of contemporary interference by International Financial Institutions in the internal affairs of its indebting state, otherwise referred to as the external form of self-determination. The task is to promote genuine self-government and expression of the will free from external interference and internal domination which affect the corporate existence of a nation.

The objective of this study focuses on the general *TWAIL* goal of reformation of international law to serve as a liberating force from internal as well as the external domination that stifles national economic and social aspirations and often posed a threat to the corporate existence of states. The approach offers an alternative view to the traditional and classical conception of self-determination, which, in its current typology, fails to accommodate the legitimate assertion of groups and nationalist self-determination against the international economic order control by international financial institutions. In other words, the mainstream conception of self-determination failed to provide answers to fresh claims of neo-colonial economic and financial bondage that is allegedly subjugating less developed states and peoples in the twenty-first century. Thus, by focusing on the foundational value and goal of the principle of self-determination, this underpins the vision and promise of the right, especially in the face of contemporary neo-colonial subjugation of people both from within and outside of the state. Thus, the study's interpretation of international law and the application of self-determination departs from the dominant conception of the right as constructed from the liberal democratic and human rights notion of the right. Contrary to the liberal-democratic theory definition of self-determination as the doctrine of democratic rule and human right promotion.[124]

1.6. Summary of the Chapter

From the preceding discussion, the chapter explained the *TWAIL* approach that question the hegemonic character of global economic order and how the neo-colonial practices of the international financial institutions are embedded into the language of international law. The reincarnation of civilisation project in the form of human rights and

[124] Scott, D. (2012). Norms of Self-determination: Thinking Sovereignty Through. *Middle East Law and Governance*, *4*(2-3), 195-224.

universal good governance mission[125] establishes the central premise of the concept of neo-colonialism, which explains the continuing encounter of colonial features after the official independence of the former colonial territories. The theoretical and conceptual of the study gives clarity to what precisely shall be the content and scope of the right to self-determination in the present interconnected topic. The construction of the research problem along the line of neo-colonialism was designed to establish sovereign debt conditionality as the extension of the colonial policy contrary to the normative doctrine of self-determination. This view provided the basis for the reconstruction of the meaning of the right to self-determination to reflect the contemporary challenges and safeguard the people's rights of economic self-determination particularly in the context of the alleged sovereign debt bondage. Viewed through the lens of neo-colonialism, the IFIs framing of conditionality in terms of "democratization" and "good governance," is a plot to interfere with the indebting country decision-making and subject them to neo-colonial domination.[126] With the new IFIs agenda, the borrower states, although formally recognized as self-governing, end up losing their economic self-determination to the financial institutions.[127]

[125] Chimni, B. S. (2012). Capitalism, Imperialism, and International Law in the Twenty-First Century. *Or. Rev. Int'l L.*, *14*, 17.
[126] Saito, N. T. (2010). 50
[127] *Ibid*

2. Chapter Two: The Evolution of the International Law Principle of Self-determination

This chapter presents a review of literature on the essential components of the evolution of the principle of self-determination in contemporary international law. The chapter analyses the various relevant debates and contributions on the international law principle to self-determination, adopting a critical approach to examining the related discussions and arguments in a logical order. The academic coverage of self-determination is vast and broad enough for a study of this nature to review all the literature, but the study will select and focus on perhaps some of the most important and relevant contributions. The research objective guides the review and selection criteria, which were used to include or exclude literature, to ensure that papers are included because of their relevance to the research topic. The exclusion of some works in the study does not reflect its lack of importance; it instead relates to the word limit and the understanding of the research requirements. A well-informed approach to trace and examine the right of self-determination will require a broader understanding than the primarily legal publications; it includes other issues intricately related concepts such as nationalism, liberalism, and the historical context of the right. The right is also linked with fast-changing events, and a good way to keep up with current developments.[128] The starting point for this chapter is the review of the evolution of self-determination from a political concept, to a legal right and later as a legal right applicable under the contemporary human rights law regime. The conceptualisation of the historical evolution and transformation flows from the general to the specific, which is divided into the decolonisation process, post-colonial era and contemporary application of the right.

2.1. Historical Background and Development of Self-determination

The international law principle of self-determination has attained prominent status as a people's right to determine their political status and freely pursue their economic, social, and cultural development. The principle has emerged as a strong force in the history of people's emancipation from tyranny within an existing political order. It has become an important principle used as both a means to attain independence and a means to defend sovereignty as well. While being widely recognised under several international and regional

[128] Summers, J.J. (2005). 99

legal instruments, the principle has evolved into a range of rights and its scope of application has been expanded to a diverse group of "people".[129] Various ethnic groups, indigenous peoples and nationalists effectively articulate and pursue their right to self-determination as a people with distinct social, linguistic or political backgrounds, entitled to an independent political entity under international law. These diverse and pluralistic demands for political, cultural and ethnic people's right to self-determination across the globe have generated extensive media coverage and even more academic debates on the content and the scope of people's entitled to the right.[130] The historical and ideological basis of the principle lies in the revolutionary goal of forming new principalities, shifting alliance or resisting any form of foreign invasion.[131] All these merged to form the constituent elements of the concept of self-determination, recognised by the International Community in the early twentieth century as a political principle that governs the affairs of the Westphalian sovereign states.[132]

The principle of self-determination evolved going through different shades of meaning but grounded in the foundational value of liberation against tyranny and the exercise of unrestrained power by a sovereign against the general wishes of his subjects.[133] In his appraisal of the international law principle of self-determination, Cassese related the emergence of self-determination to the rise of political movements for sovereign nation-states in Europe and America.[134] The popular rejection of the absolute monarchical rule in Europe and the rise against the fanatical wars fought in the name of religion powered a new wave of political awakening which inspired the adoption of nation-states administered upon the principle of individual liberty, social justice and national self-determinism.[135] The movements have had significant impacts on the general understanding of the principle of self-determination more so as a legal right of people within an established territory to determine their collective political destiny.[136] However, the historical 1776 American and the 1784 French revolutions represent a significant milestone in the evolution of the principle of self-determination.[137] The combined internal pressure and external influence contributed to the

[129] *Ibid*
[130] Thornberry, P. (1989). Self-determination, Minorities, Human Rights: a Review of International Instruments. *International & Comparative Law Quarterly*, *38*(4), 867-889.
[131] Emerson, R. (1971). Self-determination. *American Journal of International Law*, *65*(3), pp.459-475.
[132] O'Neill, O. (2003). Justice and boundaries. In *Political Restructuring in Europe* (pp. 74-93). Routledge.
[133] *Ibid*
[134] Cassese, A. (1995). *Self-determination of Peoples: a Legal Reappraisal* (No. 12). Cambridge University Press.
[135] Blay, S. K. (1996). 'Self-Determination: An Historical and Analytical Inquiry into Its Origins and Evolution, 1400-1945'. *Austl. J. Legal Hist.*, *2*, 117.
[136] *Ibid*
[137] *Ibid*

movements that caused both the American declaration of independence and the French Revolution.[138] According to Franklin J, the internal social, political and economic challenges in America led to the popular resistance that replaced the old institutions of the British imperial rule.[139]

The resistance movement that started as a class struggle and rapidly culminated in the famous American declaration of independence historically became the cornerstone for the revolution in France.[140] A few years after the American declaration of independence, the Revolutionary documents were translated into French, thus becoming a source of inspiration to the French revolution and one of the major political references for the French liberal democratic future.[141] The two republics became sisters in history and the idea of self-determination and representative government. By the end of the eighteenth and the beginning of the nineteenth centuries, the concept of self-determination was increasingly popular within the existing states in Europe at the time when nationalism rose to prominence as a driving force of politics and international activity. Adding to this point, Musgrave suggested that the modern principle of self-determination drew its inspiration from the concepts of popular sovereignty and representative government in Western Europe, which continue to have an impact on the notion of liberty, constitutionalism and the rule of law.[142] The newly found idea of liberty, constitutionalism and national identity politics turn out to play a significant role in the development of self-determination as a twentieth-century political concept in central and Eastern Europe leading to the breakup of the Austro-Hungarian and Russian empires.[143]

2.2. The Wilsonian and Lenin Principle of Self-determination

The principle of self-determination appeared first on the international stage at the Versailles peace treaty, used as the peace treaty principle by President Woodrow Wilson. The principle was articulated in Wilson's Fourteen Point Peace agenda during the First World War as a settlement mechanism for European ethnic nationalism, which led to the radical transformation of the principle in the decades after the Second World War.[144] It laid the foundation

[138] Cassese, A. (1995). 133
[139] Jameson, J. F. (1967). *The American Revolution Considered as a Social Movement*. Princeton University Press.
[140] *Ibid*
[141] Marienstras, E., & Wulf, N. (1999). French Translations and Reception of the Declaration of Independence. *The Journal of American History*, *85*(4), 1299-1324.
[142] Musgrave, T. D. (2000). *Self-determination and National Minorities*. Oxford University Press.
[143] *Ibid*
[144] Cassese, A. (1995). 133

for modern self-determination and set the scene for subsequent cases. In his work, Whelan offered a robust analysis of the two unsettled interpretations of Wilson's liberal democratic versus ethnic nationalism theory of self-determination. Whelan suggested that the Wilsonian idea of self-determination is linked to the concept of liberal democracy and represents the notion that the legitimacy of governance is dependent upon the consent of the governed.[145] Arguing against the connotation of Wilson self-determination as ethnic nationalism that represents the idea of statehood and governance by ethnic peoples or nations, Whelan suggested that the Wilson self-determination was calculated and perhaps only targeted to solve the problem of ethnic communities at the time. The ethnic peoples were to be accorded statehood supervised by the Council of the League of Nations, at the same time; the colonial territories of the defeated powers were transformed into Mandates of the League and entrusted to the control of the allies.[146]

Allen contended that after a close examination of the Wilsonian self-determination, he is of the view that there was no prior consideration of ethnic nationalism in Wilson's idea of 'national self-determination. The expression and application of the Wilsonian theory of 'national' self-determination was simply a reflection of wartime strategy and diplomacy.[147] For Wilson, the right of 'self-determination of peoples' was rooted in the Anglo-American tradition of civic nationalism: that is, self-determination as the right of communities to self-government. Thus, according to Allen, the application of the principle in wartime reflects on the compelling questions of security, diplomacy and economics. When Woodrow Wilson proclaimed the right to self-determination in what had the sound of being universal terms, self-determination at that time was practically applicable to the territories unsettled by the First World War and which rulings, did not effectively extend beyond the peace-making at the end of the war.[148] In essence, the common interpretation of Wilson theory of national self-determination today is that it idealized more self-*government* rather than the Ethno-nationalist political ideal.[149] However, while Wilson's self-determination became famous as a liberal democratic principle, on the one hand, Lenin's principle of self-determination, on the other hand, connotes more of self-determination as a principle for ethnic nationalism. Lenin

[145] Whelan, A. (1994). Wilsonian Self-determination and the Versailles Settlement. *International & Comparative Law Quarterly*, *43*(1), 99-115.
[146] *Ibid*
[147] Lynch, A. (2002). Woodrow Wilson and the Principle of 'National Self-determination': a Reconsideration. *Review of International Studies*, *28*(2), 419-436.
[148] Emerson, R. (1971). 131
[149] Throntveit, T. (2011). The Fable of the Fourteen Points: Woodrow Wilson and National Self-determination. *Diplomatic History*, *35*(3), 445-481.

addressed the national self-determination issue that came about as a response to the national question in Russia in 1917 and advocated that each subject nation of the Empire be given a free choice to separate from or to remain united with the Great-Russian people. With the subsequent Bolshevik Soviet Union adoption of Lenin's idea of national self-determination, the Lenin principle of self-determination became more associated with the concept of ethnic nationalism and the right of nations to self-determination and independent statehood.[150]

The principle of self-determination became more popular being addressed indirectly by the League of Nations through the system of mandates created under article 22 of the League Covenant. According to Hannum, the principle of self-determination was used as an organising principle in drawing new "nation-state boundaries. The Allied powers agreed to administer fourteen territories under League supervision, accepting that the development of colonial peoples formerly under the sovereignty of the defeated powers was "a sacred trust of civilization".[151] Building upon that, the principle subsequently found its way into the judicial records at the end of the First World War in the Aland Islands case. The Islands were under Swedish control from 1157 to 1809 and retained their Swedish linguistic and cultural heritage. After Sweden's defeat by Russia in 1809, the Treaty of Frederik sham ceded Finland (including the Aland Islands) to Russia, and Finland became an autonomous Grand Duchy within the Russian empire.[152] Subsequently, the people of the Islands sought to rely on the principle of self-determination to break away from Finland and become part of Sweden which they have a linguistic affiliation. The Aalanders rejected initial Finnish offers of autonomy, and eventually, the League of Nations was called upon to determine the Islands' status and the merit of the claim for self-determination. The Commission of Inquiry reached a conclusion-that the Aland Islands' culture should be safeguarded by granting the autonomy of the island under Finnish sovereignty. Therefore, the committee of rapporteurs denied that the Aalanders had the right of self-determination in this case. However, the Commission did suggest that the exercise of the right of self-determination for Aland citizens could in circumstances of extreme oppression be possible nevertheless.

[150] Page, S.W. (1950). Lenin and Self-determination. *The Slavonic and East European Review*, pp.342-358.
[151] Hannum, H. (1993). 119
[152] *Ibid*

2.3. Self-determination in the United Nations Legal Documents

For the first time, the principle of Self-determination became recognised as a principle of international law in the 1945 charter of the United Nations. The legal character of self-determination is found in its mention within the United Nations Charter,[153] and other several international legal instruments including the International Human Rights Covenants (The International Covenants on Civil and Political Right[154] (ICCPR) and the International Covenants on Economic, Social and Cultural Rights[155] (ICESCR) and several other UN General Assembly Resolutions. The inclusion of self-determination in Article 1(2) and 55 of the United Nation Charter marked the universal recognition of the principle as essential to world peace and friendly relations among states. The reference to self-determination in the Charter represents a vital step in the development of the legal right to self-determination; however, the common understanding is that self-determination did not acquire a legal right in the Charter. The mention of self-determination in the UN Charter in its article 1 (2) stated that among the purposes of the UN, is "to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples".[156] The charter elaborated further in article 55 of its objective of promotion of the international economic and social cooperation and creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples.

While there exists a consensus on the development of self-determination from a political principle into a general law of the UN, it remained unclear as to what legal right the principle of self-determination connotes at that time. However, the adoption of the UN general resolution 1514 of 1970 on the Declaration on the Granting of Independence to Colonial Countries and Peoples[157] reaffirmed and strengthened the legal character of the right to self-determination. The decolonisation process launched under the banner of UN general assembly resolution 1514 Declaration on Granting Independence to the Colonial Countries and Peoples proclaimed the right of self-determination for all colonial peoples. The resolution came as a landmark in the application of self-determination in international relations which provided that the subjection of peoples to alien subjugation, domination and exploitation

[153] The United Nations Charter 1945
[154] The International Covenants on Civil and Political Right 1966
[155] The International Covenants on Economic, Social and Cultural Rights 1966
[156] United Nations Charter
[157] The Declaration on the Granting of Independence to Colonial Countries and Peoples 1970

constitutes a denial of fundamental human rights and is inconsistent with the Charter of the United Nations goal of promoting international peace and security. The resolution declared that all peoples have the right to self-determination; by virtue of that right, they freely determine their political status and freely pursue their economic, social and cultural development. The language used in this resolution indicated a binding nature to the right, although the Resolution, being a GA Resolution, is not legally binding. The term "right" is, for instance, used instead of the term principle used in the UN Charter. The Declaration played a vital role in the development of the self-determination principle; however, it remains a fiercely debated question of whether self-determination exists as *lex lata* in the post-colonial context.

Following the adoption of the twin human rights covenants ICCPR and ICESCR, the right to self-determination presumably became inviolable and universally applicable to all peoples, both colonial and non-colonial. Article 1 of the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights provided that:

> *"1. All peoples have the right of self-determination. By virtue of that right, they freely determine their political status and freely pursue their economic, social and cultural development.*
>
> *2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.*
>
> *3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the charter of the United Nations."*[158]

The human rights covenants transformed the legal right of self-determination into a fundamental right under which all peoples are entitled to take control of their destinies. The right to self-determination entails both a collective right to determine people's political identity as well as the right to freely design and pursue their economic and social aspiration

[158] ICCPR and ICESCR

and exercise collective sovereignty and control over their resources.[159] Although the realization of the right is viewed as an essential condition for the effective guarantee and observance of individual human rights right, however, the right is considered as a collective right and thus cannot be invoked by individuals.

Other significant international legal treaties and general assembly resolutions were adopted, giving more importance to the legal right to self-determination. The adoption of the Declaration on Friendly Relations in 1970 gave a new dimension to the application of self-determination as outlined and clarified in a legally authoritative manner. The resolution imposed on all states the duty to respect the right to self-determination and promote its realization as well as refraining from any action that deprives peoples of the right. Furthermore, the resolution recognised the people's right to resist and take measures against any forcible action against their will and the right to seek and receive support in accordance with the purposes and principles of the Charter. Other vital resolutions regulating the activity of international law subjects as it relates to the right to self-determination include the UN Resolution 1803 (XVII) on States' permanent sovereignty over those natural resources of 14 December 1962.[160] The resolutions Declare that: "Considering that it is desirable to promote international co-operation for the economic development of developing countries, and that economic and financial agreements between the developed and the developing countries must be based on the principles of equality and of the right of peoples and nations to self-determination". "The right of peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and of the well-being of the people of the State concerned."

2.4. Self-determination as a Right in the Post-colonial Context

The transformation of self-determination from a general political principle into a legal right and the changing scope of the right have generated enormous debates and commentaries. The common understanding is that the right to self-determination entails both a collective right to determine people's political identity as well as the right to freely design and pursue their economic and social aspiration and exercise collective sovereignty and

[159] Farmer, A. (2006) Towards a Meaningful Rebirth of Economic Self-Determination: Human Rights Realization in Resource-Rich Countries. NYUJ Int'l L. & Pol., 39, 417.
[160] Resolution 1803 (XVII) Permanent Sovereignty Over those Natural Resources of 14 December 1962

control over their resources.[161] Yet, the practical application of the principle of self-determination regarding people's desire to reach the noble goals of freedom and independence, especially in the post-colonial world order, remained unresolved. The practical challenges of resolving the scope and meanings of post-colonial self-determination include the open-ended character of self-determination outside the colonial context to cover all sorts of internal tyranny and external subordination. For more practical purposes, the application of the right is now generally classified and addressed as either external or internal self-determination. While the former refers to the struggle of people to overcome alien rule and achieve political independence (the typical example being decolonization and secession),[162] the latter entails autonomy or democratic right of people within internally established boundaries. The post-colonial self-determination debate centred on the perplexing question of whether international law recognizes self-determination as a putative right for all peoples in a non-colonial setting.

The question of the application of the right to political self-determination in the post-colonial era relates to the protection of states against transgression by the sovereign or external interference into domestic affairs as well as the collective political identity of people's within a particular political entity. Despite the large body of international law declaration regarding the right to self-determination, however, no existing treaty expressly rejects or recognizes self-determination in the post-colonial context. In addressing this question, the expressions of the UN assembly declarations of self-determination are two-faced and stand to be challenged. Self-determination is, on the one hand, said to be a universal right, and yet, on the other hand, it also is said to apply only to those people experiencing colonial domination within their colonially-derived bounded territory. According to Emerson, what emerged beyond dispute in post-colonial self-determination was "that all people do not have the right of self-determination and self-determination is to be exercised only once to secure liberation for a state and is then extinguished.[163] Emerson cited article 6 of the 1960 Declaration that condemns as incompatible with the Charter "any attempt aimed at the partial or total disruption of the national unity and territorial integrity of a country." The one circumstance in which the present rules allow the continued exercise of self-determination is when a dependent people opted for some status short of full

[161] Farmer, A. (2006) 159
[162] Falk, R.A. (2002) 2. P100
[163] Emerson, R. (1971). 131

independence in which the territory will retain the right to be invoked self-determination to opt-out whenever the people concerned so desires.[164]

In the UN San Francisco conference debates on self-determination, France requested the Technical Committee to explain whether self-determination, as incorporated in the Charter, implied the right to democratic institutions or the right of secession in the post-colonial context. [165] The Technical Committee chairperson clarified by asserting that the right of self-determination guarantees people the right to establish any regime they favoured. This position, however, has been countered on several deliberations of self-determination within the context of the UN resolutions against a background of the *travaux preparatoires*. [166] The counter-argument comes in the years after San Francisco where Belgium's argument for including the Pathans, Kurds, Nagas and Karens as peoples entitle to self-determination, was rejected by the United Nations. With this, it can be argued; therefore, there is nothing in the United Nations Charter practice to suggest that the right to self-determination was meant to cover all cases in the post-colonial context. Adding to this argument, Blay analysed self-determination as contained in Article 1 of both The International Covenants on Economic, Social and Cultural Rights and Civil and Political Rights (1966).[167] He argued the provision relates to the recognition of self-determination as a right in the colonial context because Article 1(3) of the same covenants, the respect for and realization of the right of self-determination is related to the administration of "Non-Self-Governing and Trust Territories".[168] Neither covenant makes mention of self-determination as a general right that transcends the colonial context.

Debating on the question of application of the right to self-determination outside the colonial context, other writers such as Rigo Sureda, also viewed the right to self-determination as limited only to those colonial and trust territories that existed in 1945. According to Sureda, the U.N. application of Charter Article 1 (2) had been limited to colonial situations as that was also the case with the texts of U.N. Resolution 1514 (XV), Resolution 1541 (XV), the International Covenants and the Friendly Relations Declaration. To Sureda, the post-colonial self-determination cases of Israel and South Africa are

[164] *Ibid*
[165] Blay, K. N. B. (1985). *Self-determination: Its Evolution in International Law and Prescriptions for its Application in the Post-colonial Context* (Doctoral dissertation, University of Tasmania).
[166] *Ibid*
[167] *Ibid*
[168] *Ibid*

exceptions for territories under racist occupation.[169] In contrast, however, during the drafting stages of the covenants, the delegates from former colonies were mostly in support of self-determination, as contained in Article 1 of the human rights covenants, which applies in the non-colonial context. The Egyptian delegation, for example, notably argued that the right of self-determination of peoples "was the right to free expression of popular will and had to be respected regardless of whether that will be in favour of secession or association. Panama took the view that attempts to exclude groups resident in sovereign states from the right of self-determination would only motivate groups to resort to violence. The delegation from Ireland thought that the right of self-determination should be available in the post-colonial context where people's political, economic, national or cultural rights were threatened or violated.

Furthermore, as addressed in the Banjul Charter, the charter appeared to uphold the application of self-determination in the post-colonial context. Article 20 paragraph 1 of the Charter provides that all peoples shall have an inalienable right to self-determination and in paragraph II, providing that colonized or oppressed people have the right to free themselves from the bonds of domination through a means recognized by the international law. During the drafting of the Charter in 1979, the fear of misinterpretation of the word "peoples" as a general term or category of which "colonized or oppressed people" constitute a sub-category was raised by some of the experts. Despite the objections, however, the OAU's Eighteenth Assembly of Heads of Government adopted the Charter without changes. The charter chose not to foreclose the issue of post-colonial self-determination altogether, as was the case under the OAU Charter. Other proponents of the ongoing character of the right to self-determination include Helen Quene. Helen interpreted the provision of article 1 of the ICCPR and ICESCR, and the phrase "all peoples" to suggest that the principle applies universally. As she argued further, the reference in paragraph 3 to the States "including those having responsibility for the administration of Non-Self-Governing and Trust Territories" also suggests that the Article is not confined in its application to colonial territories. Furthermore, Article 1 is included in Covenants that were intended to apply to all peoples and hardly conceivable that it should apply only to certain peoples.[170] Umozurike, like many other proponents of the ongoing character of self-determination, expressed the view that the omnipresence of self-determination in the U.N. resolutions such as the 1514 and 1541 was

[169] Laing, E. A. (1991). The Norm of Self-determination, 1941-1991. *Cal. W. Int'l LJ*, *22*, 209.

[170] Quane, H. (1998). The United Nations and the Evolving Right to Self-determination. *International & Comparative Law Quarterly*, *47*(3), pp.537-572.

evidence of state practise, which over the years transformed into a customary international law particularly in its anti-colonialism aspect.[171]

Umozurike also stressed that the widespread adoption of the principle of self-determination in the constitutions of several countries strengthened its position as customary international law. Adding to this view, he argued that the facilitation of independence of dependent based on the principle of self-determination had given firm recognition to the principle regarding colonial peoples and had accelerated the emergence of the principle as one of customary international law.[172] The U.N special rapporteur Aureliu Cristescu also viewed the principle of self-determination as a rule of customary international law and that the General Assembly resolutions and decisions of the International Court of Justice cemented the legal status of the right self-determination as a rule of customary international law.[173] Cristescu remarked that the recognition of the principle of self-determination by the UN Assembly as a principle of international law brings to an end the heated debates in relation to the legal nature of this principle. According to Cristescu, Self-determination is no longer a mere political catchphrase or purely domestic matter. The principle is now a universally recognized and legally binding principle that forms a rule of customary international law regulating the activities of states and other subjects of international law.

2.5. Application of Post-Colonial Self-Determination in International and Regional Case Law

The Katanga secession case was the first test for the UN position on post-colonial self-determination. Eleven days after the independence of the Congo Republic, civil unrest broke out in the country that led to Katanga Province declaring its independence. The chain of events that led to the secession comprised two distinct major phases as suggested by Lemarchand. Firstly, the general elections of May 1960, ending with the neutralization of the forces opposed to the ambitions of Tshombe and the Conakat. Secondly, the mutiny of the Force Publique in the early days of July 1960. The growing tension in the country brought about the creation of an independent state in the Katanga.[174] The UN Security Council

[171] Umozurike, U. O. (1972). *Self-determination in International Law*. Archon Books.
[172] Laing, E. A. (1991). 169
[173] *Ibid*
[174] Lemarchand, R. (1962). The Limits of Self-Determination: The Case of the Katanga Secession. *The American Political Science Review*, *56*(2), pp.404-416.

members opposed the secession with France, and the United Kingdom calls for negotiation and reconciliation. Subsequently, the Security Council authorized the dispatch of United Nations' troops to the Congo and eventually recognised the unity of the Congo, which led to the Katangese failed secession. The Katangese case came up again in 1992 when the President of the Katangese Peoples' Congress requested the African Commission on Human and Peoples' Rights to recognize the independence of Katanga. The Commission ruled on this request in 1995. In denying the request, the African Commission said that the claim had no merit under the African Charter on Human and Peoples' Rights, since there was no evidence of violations of any rights under the African Charter.[175]

The International Court of Justice equally gave some crucial decisions in this area of international law and recognised self-determination as indeed a legal right, rather than a political aspiration, both in its external as well as in the internal dimension.[176] The court has dealt with the right of peoples to self-determination in the context of decolonization and equally dealt with the post-colonial self-determination in different political and legal contexts such as the Western Sahara case. The United Nations General Assembly requested the ICJ in 1974, for an advisory opinion on the objections by Morocco and Mauritania to the referendum on decolonization that Spain planned to hold in Western Sahara. Historically, Western Sahara became a Spanish colony in 1884. Following the adoption of the Independence Declaration (resolution 1514) in 1960, the international pressure on Spain and Portugal to give up their overseas colonies increased. As Spain bow to the pressure, both Morocco and Mauritania began to lay claim to the territory. Spain announced that its plan to decolonise the territory based on the right to self-determination of the colony's population – a position that was accepted by both Morocco and Mauritania, although each still considered West Sahara to be part of its respective territory. While Spain maintained that a referendum should be organised in the territory, Morocco took the view that the case should be brought before the ICJ.[177] The court's task, in this case, was to determine the legalities of the pre-colonial situation and their relevance for the present.

[175] Katangese Peoples' Congress v. Zaire, African Commission on Human and Peoples' Rights, Comm. No. 75/92 (1995).
[176] Zyberi, G. (2009). Self-determination through the Lens of the International Court of Justice. *Netherlands International Law Review*, *56*(3), 429-453.
[177] *ICJ's Advisory Opinion of 1975 in Western Sahara Case. Available on: https://www.icj-cij.org/files/case-related/61/6197.pdf (last accessed on 11th Nov 2019)*

The court turned these otherwise historical questions about Western Sahara at the time of colonization by Spain into a modern problem of self-determination.[178] Since 'legal ties' was not a technical term in international law, the court looked for its meaning in the object and purpose of the General Assembly resolution that decided to request the advisory opinion.[179] The court concluded that at the time of Spanish colonization, both Morocco and the Mauritanian entity had legal ties to the territory of Western Sahara including some rights relating to land. However, none of the legal ties was of such a nature as to affect the decolonization of Western Sahara. Furthermore, the application of the principle of self-determination outside the colonial context came to the fore in the ICJ's Advisory Opinion of 1971 in the *South-West Africa (Namibia) Cases,*[180] which pertained to the question of the legal consequences of the continued presence of South Africa in Namibia.[181] After a prolong judicial process, in this case, the court's verdict came condemning the illegal occupation of Namibia by South Africa and call for respect for fundamental human rights and the peoples of Namibia right to self-determination.[182] This case appeared to have settled the issue of application of self-determination outside the colonial context by reaffirming the view that the people of Namibia have the right to self-determination. Nonetheless, the legal character of the right to self-determination became more precise with the judicial pronouncement of the ICJ in the case of East Timor.[183]

In the proceedings instituted against Australia in 1991 concerning Australia's exploration activities in the Timor Gap, the issue of the peoples of East Timor's right to self-determination in the context of the continued presence of Indonesia and entering a treaty on behalf of East Timor was raised. The court noted that the (East Timor) people's right to self-determination as it evolved from the UN Charter has an *erga omnes* character, which no derogation is permissible.[184] Yet again, In 2010 the ICJ issued its Advisory Opinion in response to the General Assembly request on the legality of Kosovo's unilateral declaration, the court was expected to give some direction on the applicability of the principle of self-determination outside the context of anti-colonialism. Although the ICJ Advisory Opinion did not meet the expectations of many in the international community, however, it generally

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[178] *Ibid*
[179] *Ibid*
[180] *ICJ's Advisory Opinion of 1971 in the South-West Africa (Namibia) Cases. Available on: http://www.icj-cij.org/files/case-related/53/053-19710621-ADV-01-00-EN.pdf (last accessed on 11th Nov 2017)*
[181] *Ibid*
[182] Cassese, A., (1996). *The International Court of Justice and the Right of Peoples to Self-determination*.
[183] East Timor Case
[184] *Ibid*

hinted at the continuous application of self-determination outside the colonial context. In a study on the ICJ decisions by Zyberi, G., he reviewed the decisions and observed that from 1950 to 1975, the seven cases decided in this period, six of them relate to the process of decolonization of South West Africa (Namibia). The seventh case, the Western Saharan case, displays many similarities with the South-West Africa Cases. The case of East Timor has a rather peculiar nature, having been brought before the Court on behalf of the people of East Timor by its former mandatory power, Portugal.

The Court has been mindful of the development of international law and the place of the right to self-determination within the internal legal framework. The court proclaimed the right to self-determination and the obligations arising from it, as *erga omnes* and *jus cogens* norm of international law.[185] On this point, Maurizio Ragazzi remarked that by recognising the obligations *erga omens* of the right of peoples to self-determination and acknowledging it as 'sacred trust of civilisation', the Court has extended legal support to self-determination as a fundamental human right. The ICJ has contributed to promoting respect for human rights and in a broader perspective to the realization of the right to self-determination.[186]

2.6. Scope and Meaning of "Peoples" in Post-colonial Self-determination

Now that the question of whether the right to self-determination has attained recognition outside the colonial context has been put to rest, at least with its recognition by the ICJ, the next most contested issue regarding the right to self-determination is the post-colonial "peoples" entitled to the right. The principal difficulty relating to the question of post-colonial peoples stems from the different claims and interpretations of "peoples" entitled to the legal right. After all, in the words of Judge Dillard in the *Western Sahara case*,[187] "'it is for the people to determine the destiny of the territory and not the territory the destiny of the people". The term people have been used to refer to the population of a State, the population of a colony or groups of people having a common language, ethnicity or race. If all these are considered as peoples entitled to the right to self-determination, then conflicts between competing for self-determination claims are inevitable. These conflicts, according to Helen, are set to occur when the majority of the population of a State, on the one hand, decide on

[185] Zyberi, G. (2009). 176

[186] Ragazzi, M. (1997). The Concept of International Obligations Erga Omnes, Oxford University Press. P72.

[187] *ICJ's Advisory Opinion of 1975 in Western Sahara case. Available on: https://www.icj-cij.org/files/case-related/61/6197.pdf (last accessed on 11th Nov 2019)*

their right to self-determination by defending the territorial integrity of the State while a minority ethnic group within the state decides, on the other hand, their right to self-determination by secession to form an independent State.[188] The question then arises whether the principle was meant to be a universal one or was it in reality intended to apply only to certain limited people. In discussing this issue, Helen made some excellent points by constructing the term “Peoples” in contemporary international law into three broad possible interpretations.

The three broad possible interpretations of the term “people”, according to Helen, include the term people implying States, inhabitants of Non-self-Governing Territories or the inhabitants of Trust Territories. All these interpretation of "peoples" are compatible with the object and purpose of the Charter. Helen suggested the reference to equality in articles 1(2) and 55 might be regarded not so much as a statement of the legal position of different peoples but a rejection of the idea of racial superiority. In Helen's account, with the termination of Trust Territories or Non-self-Governing, this suggests that the term "peoples" currently applies to the States. Since the overriding principle governing interstate relations is the principle of sovereign equality, the reference to equal rights and self-determination may be a reformulation of the principle of sovereign equality of States. Adding to this debate, Kelsen equally interpreted people as states. Kelsen bases his interpretation on the reference in Article 1 (2) to relations between nations, which he interpreted as relations between States and concluded that the term "peoples" in connection with equal rights probably has the same meaning as the States since only the States had rights under international law. According to Kelsen, "the formula of Article 1, paragraph 2, has the same meaning as the formula of Article 2, paragraph 1, in which the principles of sovereignty and equality are combined with 'sovereign equality.' He does not regard the principle as merely a reformulation of the principle of sovereign equality.

The interpretation of the term “peoples” to refer to states has been criticised as inconsistent with the travaux preparatoires that cannot be supported by any standard rule of international treaty interpretation. According to Nawaz, it could scarcely be expected that the United Nations Charter, a form of a treaty, would mention the same concept in two articles.[189] Therefore, this ruled out the possibility that self-determination applies to the States since if it did apply to the States, it could be regarded as a legal right on the basis that it is merely a

[188] Quane, H., (1998). 170

[189] Nawaz, M.K. (1965). The Meaning and Range of the Principle of Self-determination. *Duke LJ*, p.82.

reformulation of the legal principle of sovereign equality. This, therefore, suggests there is a general lack of a unanimous acceptable definition of what a people is, i.e., who are the ones to exercise the rights. In a different evaluation of the term of "Peoples" right self-determination, Hannum remarked that from 1960 on, at least as articulated by the United Nations, self-determination had little to do with ethnicity, language, or culture. Territories, not peoples, enjoyed the right to independence. The second half of the twentieth century saw a territorial right to independence for former colonies replaced the nineteenth-century principle of allowing ethnic, linguistic, or religious groups to form various kinds of political units that might become independent states.[190] Based on the debates regarding the meaning of the term "all people" as used in article 1 of the human rights covenants and other resolutions, a strong case can be made for or against the right applying to all or any of the three interpretations.

In her work on self-determination, Rosalyn Higgins provided a reflective view of the term people as used in the international human rights covenants and other related documents in international law.[191] Higgins stressed that the inclusion of self-determination into article 1 of the 1966 human rights covenants built the bridge from a legal obligation in decolonisation to a human right of all people. Higgins explained further that the first article of the covenants, as interpreted via standard rules of treaty interpretation, makes it clear that all peoples, including decolonised peoples, are entitled to full self-determination. Therefore, Peoples, not states, are also guaranteed the right to self-determination and the right to dispose of their natural resources freely. However, given the lack of precise definition of Peoples, to Emerson, the assertion of the term "people" to imply groups is meaningless and highly unlikely to be taken at all seriously. Emerson stressed further that it is a declaration of an extreme anarchistic authorizing any group that labels itself as a people to unsettle the existing political entity to set up an independent state which meets their desires. Emerson proposed an alternative approach that can tame and domesticate the right to self-determination. This approach is to turn away from "all people" and to assume that it is a right that can be exercised only if the entities to whom it applies are, by some form of consensus, specifically identified in advance and that the place, the time, and the circumstances under which it is applied are all similarly pinned down. If the appropriate legal authorities accept the identification of people, circumstances and the need to see that the asserted right is respected,

[190] Hannum, H. (1998). The Right of Self-determination in the Twenty-First Century. *WAsh. & lee l. rev.*, *55*, 773.

[191] Higgins, R. (1995). *Problems and Process: International Law and How We Use It*. Oxford University Press. Page 114

and then the right becomes operative.[192] Moreover, it can be argued that the right can be exercised in different ways, not only through the declaration of independence or secession from an existing state.

2.7. Modern Construction of Self-determination – Internal Democracy vs External Secessionist Self-determination.

As more secessionist groups within the post-colonisation States continue to claim their separate international political identity, the modern international law expounds on the idea of internal and external application of self-determination to settle the cases without necessarily disrupting the existing international order and territorial integrity of states.[193] The idea is that the legitimate interests of peoples or ethnic groups shall first be accommodated within the framework of existing States, in other words, internal self-determination. Only in extreme violation of the internal aspects of the right shall the external self-determination be accessible. Thus, no legal right of secession exists, where there is an impartial and effective representative government. The Canadian Supreme Court has established this position in the landmark case of Quebec unilateral declaration of independence.[194] The court ruling came following a referendum in 1995 by Quebec to secede from Canada. The Canadian Supreme Court dealt with a question concerning the legal issues regarding self-determination and the proposed separation of Quebec from Canada.[195] The Court distinguished the internal self-determination from the external self-determination, by holding that people have, as a first option, the right to enjoy their internal self-determination and only in circumstances where the internal right is disregarded and disrespected by the mother-state, may the people's right to external self-determination (break-off) accrue.[196] These conceptions of self-determination have prompted debates regarding the version recognised as more appealing to justice, and more ideal for the demands of people in the modern world.

[192] Emerson, R. (1971). 131
[193] Wolff, J. (2014). The Question of Self-determination in International Democracy Promotion. PRIF Working Papers No. 19, Frankfurt/M.
[194] Re Secession of Quebec, [1998] 2 SCR 217.
[195] *Ibid.*
[196] *Ibid.*

Koskenniemi assessed the two versions and classified them into the liberal democratic (internal) self-determination and the nationalist model (secessionist) self-determination.[197] The first version of the democratic model of self-determination, according to Koskenniemi**,** identifies the authentic expression of human nature and aspirations, needs to be channelled into the formally organised states to prevent *bellum omnium.*[198] The organised democratic system, therefore, makes it possible for people to participate in the conduct of their everyday affairs within the state. On the contrary, the secessionist nationalists see Nations as social entities distinct from the states and are therefore the best candidates for the right of self-determination.[199] In the nationalist view, statehood is only valuable to the extent that it represents the communal identification of the people or the nation, and nationhood is something more fundamental than merely a democratic model. For Koskenniemi, the struggle between the two models of self-determination is the basis that the current international law of self-determination wrestles unsuccessfully.[200]

Numerous objections emerged from both sides of the debates between the proponents and critics of the two versions, often citing reasons to identify a particular version as the only acceptable conception of self-determination by their proponents. The proponents of the democratic model of self-determination often rely on Wilson's concept of self-determination to support their point that political liberty and democratic participation should be the goal for the right to self-determination. While pushing for the internal application of self-determination as the only legitimate form of self-determination, the liberal democratic model argued that in this contemporary world characterised by migration, integration, and the ever-shifting form of modern identity, the call for self-determination base on national identity is anachronistic. Only a few states can claim to be composed of a homogenous ethnic group and even those states that make this claim will sooner rather than later recognise the slow but inevitable demographic changes taking place as a result of immigration and increased cultural integration.[201] However, the proponents of secessionist nationalist self-determination viewed democratic participation as an insufficient solution to self-determination crises. The nationalist model holds the view that national separatist movements are inevitable when the

[197] Koskenniemi, M. (1994). National Self-determination Today: Problems of Legal Theory and Practice. *International & Comparative Law Quarterly*, *43*(2), pp.241-269.
[198] *Ibid*
[199] *Ibid*
[200] *Ibid*
[201] Bishai, L. (1998). Altered States: Secession and the Problems of Liberal Theory. *Theories of Secession. London and New York: Routledge*, pp.92-110.

political system overflows with oppression and relentless violations of human rights, and therefore secession seems the key to making things right.[202] For this reason, the nationalist model believes that the best way to stop a fight is to split up the antagonists, and thus, self-determination must logically include a right of national secession.

Often cited by the nationalist model of self-determination, the stalemate in the former Yugoslav crisis ceasefire arrangement held in the Conference on Yugoslavia established on 27 August 1991 by the European Communities, proved difficult in some cases to organise effective federal arrangements for power-sharing that involve the representation of the constituent republics. The Yugoslavia ceasefire arrangement collapsed due to the widespread ethnically motivated violence and the displacement of persons, making separation as the only viable option. Slovenia, Croatia and Bosnia-Herzegovina were admitted to the United Nations on 22 May 1992, and later Macedonia was admitted on 8 April 1993. On this account and similar other instances, the secessionists pointed out, as a matter of fact, the need for secession and argued that the democratic model of resolving self-determination crises could only last for so long, but often not resolve all crises on a permanent. Ongoing Catalonia, Scottish and other regional secessionist crises are other examples of persistent demands for self-determination despite the relatively advance democratic participation. What that suggests is that the idea of the modern democratic model of self-determination only presents a rosy portrait of self-determination and oversimplification of the phenomenon, which perhaps, fall short of answers to the complex questions of the right to self-determination. Many ethnic groups within established States increasingly claim for separate international political status, and although the international law cannot encourage a general Balkanization of the globe, however, in cases of extreme repression of an ethnic group by a ruling majority, secession may provide the only viable remedy to resolve the conflict.

On a different perspective concerning the plight of secessionist minority groups within a modern democratic setting, Higgins discussed whether minorities are entitled to self-determination and how exactly. Higgins remarked that self-determination as the right of the minorities is related to the "proper protection of minority rights" and that the minority rights are discrete rights. The intricate connection in the ethnic minority or indigenous rights of self-determination is only explained in terms of national governments and the way they treat minorities. Higgins argued that national governments must protect the right of minorities and provide them with a level of autonomy in cases of unfair treatment within national borders. In

[202] *Ibid*

multi-ethnic states, minorities "shall not be denied the right to enjoy their own culture, to profess and practice their religion, and to use their language". By the right to self-determination, the national government protects minority rights of groups as well as the right to participate in the national governments.[203] However, where the state fails to protect its peoples or even denies their rights to practice their own culture, religion, or use of language, then this position may change, and international shall consider recognizing the minority's right to secede.[204] This later view of secession as the last option for redressing minority rights has been further entrenched in the recent literature on the right of self-determination, including the remedial right only theory and primary right theory. Whereas Remedial theory asserts that a group has a general right to secede if and only if it has suffered certain injustices, for which secession is the appropriate remedy of last resort. Primary Right Theories, in contrast, asserts that certain groups can have a right to secede in the absence of any injustice.[205] They do not limit legitimate secession to be a means of remedying injustice.

Allen Buchanan formed the *Remedial Right Only* Theory, also known as *Just-cause* theory. Buchanan, who offered a restrictive view of the right to secession, argued that a group has a right to secede only if it is a victim of injustice. In Buchanan's theory, a group is required to demonstrate that it has a valid claim to the territory in question and at the same time being a victim of systematic political oppression or serious cultural repression. He outlined some different kinds of injustice: from egregious violations of human rights and genocide to prior occupation and seizure of territory and discriminatory injustice. The theory created a strong internal connection between the right to resist oppression, genocide, tyranny and the right to secessionist self-determination.[206] The Bangladesh case represents one example of Buchanan remedial secession. Formerly known as East Pakistan, Bangladesh as known today was the first to exercise self-determination successfully among independent states that had emerged following the process of decolonisation in what may be called "remedial secession". In 1970, national elections were held by universal suffrage and were won by the Awami League, a party based in Bangladesh, which obtained 167 out of 313 seats in the National Assembly.[207] In March 1971, the military leaders in Pakistan rejected the

[203] Higgins, R. (1995). 191

[204] Re Secession of Quebec, [1998] 2 SCR 217.

[205] Moore, M. (2000). The Ethics of Secession and a Normative Theory of Nationalism. *Canadian Journal of Law & Jurisprudence*, *13*(2), 225-250.

[206] Buchanan, A. (1997). Theories of Secession. *Philosophy & Public Affairs*, *26*(1), 31-61.

[207] Crawford, J. (1997). State Practice and International Law in Relation to Unilateral Secession. *Expert Report Filed by the Attorney General of Canada, Supplement to the Case on Appeal in the Quebec Secession Reference.*

result of the elections, and the leader of the Awami League proclaimed the independence of East Pakistan on 26 March 1971.[208] The unilateral separation of Bangladesh from Pakistan to form an independent state in 1971 proves, for the first time, that secession still applies in the post-colonial era as contrary to earlier bids of Katanga and Biafra, which failed to establish a case for application of the right beyond colonisation.[209]

Although the UN was reluctant to recognize Bangladesh secession from Pakistan, the result of the massive human rights abuses of genocide and crimes against humanity committed by the Pakistani armed forces forced its decision to recognise the secession and independence of Bangladesh in 1971. Bangladesh was not admitted to the United Nations until 1974. By suggesting a strong link between secession and human rights, Buchanan argument imbued the right of secession within the generally accepted framework of human rights. One major issue with this theory, however, according to Moore, lies in the lack of recognised neutral international arbiter responsible for determining the merit of such claims. In which case, it is therefore likely that a group that is unjustly treated and subjected to exploitation, oppression, marginalisation, will also be unfairly denied the opportunity to exercise their right to secession.[210] Despite the criticism, however, there is no doubt that Buchanan's remedial theory satisfies many of the modern conceptions about self-determination and secession. Another human right theory of self-determination, the primary choice theories of secession, provided a contrast to remedial theory. Beran and Philpott made a case for the primary theory and asserted that for secession to be legitimate, a territorially concentrated majority is simply required to express a desire to secede (in a referendum or plebiscite) and do not require that the seceding group demonstrate that they are victims of injustice at the hands of the state or the majority rule.[211] The proponents of this theory viewed the right to self-determination/secession as the right of political association that is grounded in a deeper argument about the value of voluntary consent. Beran develops the liberal idea that consent is the basis of political obligation and confers legitimacy on the state.[212]

Beran's theory began with the assumption that the most fundamental value of liberalism is the right to individual self-determination. The concept of liberalism entails the right to freedom of association based on the notion that a political union is rightful only if

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[208] *Ibid*

[209] Rafiqul Islam, M. (1985). Secessionist Self-determination: Some Lessons from Katanga, Biafra and Bangladesh. *Journal of Peace Research*, *22*(3), pp.211-221.

[210] Moore, M. (2000). 205

[211] *Ibid*

[212] Beran, H. (1984). A Liberal Theory of Secession. *Political Studies*, *32*(1), 21-31.

membership is voluntary. Thus, any individual who wishes to leave any political entity has the right to do so. If the majority of a population inhabiting a part of a state's territory wish to secede from that state, they have the right to do so. According to Beran's theory, the right of a group to self-determination can only be recognised on the condition that the group will respect the human rights of all those individuals who form part of the newly formed state. Furthermore, the new, secessionist group must recognise the right of the majority in any part of the territory within its borders to secede on their wish.[213] Generally, critics of the primary theory challenged this view on what they see as promoting an unending circle and indefinite divisibility. Hannum, however, accepted that the primary theory might help in curtailing violence of secession, causing potential secessionists to think more carefully about the consequences of their actions and give newly trapped minorities a way out without resorting to violence.[214]

In support of the right to secession, John McGarry discussed the problem of national pluralism in regions where there are secessionist movements and made a compelling argument against the general tendency by the liberal democratic theories of self-determination that often tried to avoid the inherent difficulties of ethnic diversity within states. McGarry criticises the often cited abstract "liberal democratic states" fashioned in the image of the United States, and to a lesser extent, Britain and France, which to the liberals seems a perfect solution to the horrific and dynamite nature of ethnic crises in different settings. McGarry argued that the case of the United States had led many theorists to generalize from the experience of a society that makes rules to integrate culturally distinct groups to the quite different case of societies with different national communities.[215] However, the experience of the United States is not typical, for it is largely a 'nation-state' with no sizeable minority nations. McGarry asserted that philosophers who recognize a broader right to self-determination, such as Daniel Philpott, tend to gloss over the heterogeneity of secessionist regions and fail to think adequately about national pluralism in post-secession states. Philpott's 'choice' theory of secession, requires that the majority in a geographical area expresses a desire to secede for the secession to be legitimate, and does not

[213] Freeman, M. (1999). The Right to Self-determination in International Politics: Six Theories in Search of a Policy. *Review of International Studies*, *25*(3), 355-370.
[214] Hannum, H. (1998). 190
[215] McGarry, J. (1998). Orphans of Secession: National Pluralism in Secessionist Regions and Post-Secession States. *National Self-determination and Secession*, pp.215-32.

require that the group be a victim of injustice or establish any particular claim to the territory.[216]

For most of the debates on the right to internal and external self-determination in contemporary international law, the two varying opinions run throughout the academic discussions in modern self-determination theory, one supporting a right of secession and the other denying it. While the ICJ recognised the right to self-determination as a *jus cogens*, however, several accounts from the literature on the law of self-determination appeared to be overwhelmingly against admitting the possibility of secession in the current international law regime. Cassese, for example, argued that the principle of self-determination is accepted only in so far as it implied the right of self-government of peoples and not the right of secession.

2.8. External Self-determination vis-à-vis the Principle of Territorial Integrity

The debate over whether self-determination applies in a far more general sense to states that have already attained independence, thus enabling any 'people' to secede if they so wish, constitutes a legal challenge between the right to external self-determination and the international law principle of territorial integrity. Despite the general recognition of self-determination by the UN legal instruments and the acceptance of people's right to secede in qualified cases, however, the very UN instruments that proclaimed the foundation of self-determination also clearly prohibited the partial or total disruption of the national unity and territorial integrity of the existing independent state. In his work "secession and self-determination" Brilmayer remarked that the debates on external self-determination and territorial integrity are broadly framed in terms of the priority and significance accorded to the two competing norms by the proponents of secession and territorial integrity.[217] The application of people's self-determination and demarcation of fixed territories often legally affect the territorial integrity of independent states. The debate on these seemingly competing norms pervades the international law discourse on the right to self-determination. In recognition of the rights of territorial sovereignty of states, the 1970 UN Declaration regarding the right of secession makes it clear that the UN condemns any action aimed at the partial or total disruption of the national unity and territorial integrity of any other state or country.

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[216] *Ibid*

[217] Brilmayer, L. (1991). Secession and Self-determination: A Territorial Interpretation. *Yale J. Int'l L.*, *16*, 177.

The case of Chechenia presents a perfect illustration of this problem. Deliberating on the Chechenia unilateral declaration of independence from Russian on 29th October 1991, The British parliament debated the question of Chechen people's right to self-determination raised by Lord Belhaven. The house (per Lord Inglewood**)** stated that; the right of self-determination is recognised under international law and international human rights, including the ICCPR and ICESR, both of which the United Kingdom has ratified. However, the right of self-determination cannot be exercised without taking into account the question of which group constitutes a people and claims regarding the principle of territorial integrity of the mother state. In the case of Chechnya, although President Dudayev's failed to gain international support and recognition for the Chechnya unilateral declaration of independence, the British government repeatedly called on the Russians to work together with the Chechnya for a political settlement that would allow the Chechen people to preserve their identity and autonomy within the Russian Federation.[218] Again, according to former UN Secretary-General Thant, the recognition of a state by the international community and its acceptance into the UN implied acceptance of its territorial integrity and sovereignty. Therefore, any further claim to self-determination must be subject to the principle of territorial integrity.[219] Several other bodies reaffirmed this view, for example, the Badinter Arbitration Committee on the former Yugoslavia, set up by the EU, concluded that whatever the circumstances, the right to self-determination must not involve changes to existing frontiers at the time of independence.

The Badinter Arbitration Committee expressed concern about the stability of frontiers', even in a case where the external frontier (of the former Yugoslavia) was not in dispute. The committee justified its decision in terms of the principle of territorial integrity, which it described as 'this great principle of peace, indispensable to international stability.[220] Also addressing the controversy of self-determination and the principle of territorial integrity which safeguards the stability of frontiers, Higgins examined the fundamental question: Is self-determination to be understood as limited to the exercise of rights within the inherited frontier? Here Higgins suggested that self-determination can be applied in different ways and even when it comes to border disputes, it needs to be settled by neighbourly relations and not necessarily by belligerent demands for the redrawing of international borders. This view

[218] Chechnya**.** HL Deb 18 April 1995 vol 563 cc460-78. Available on: https://api.parliament.uk/historic-hansard/lords/1995/apr/18/chechnya#column_475
[219] Moore, M. (2000). 205
[220] *Ibid*

resonates with the negotiation on the restoration of independence of the Baltic States after the breakup of the former Soviet Union through border adjustment. On 6 September 1991, the State Council of the Soviet Union voted unanimously to recognise the independence of the Baltic States.[221] Although the states attained their independence by way of breaking away from the Soviet Union, the position of the Russian Federation played a crucial role.[222] The campaign for independence acquired the support of all the constituent republics, including the Russian Federation, which was recognised as inheriting the Soviet legal personality, both by the other constituent republics and by the United Nations.[223]

The consensual breakup of the former USSR led to the emergence of the republics including Moldova, Kazakhstan, Kirgizstan, Tajikistan, Turkmenistan, Uzbekistan, Armenia as well as Azerbaijan who were admitted as United Nations members on 2 March 1992.[224] Furthermore, the separation of the Czech Republic and Slovakia was an equally consensual process, negotiated at the level of the governments and parliaments to separate and redraw the frontiers of the states.[225] The two of the Czech Republic and Slovakia became separate independent states after an agreement that led to the dissolution of the Czechoslovak Federation. The dissolution was completed by parliamentary action under a Constitutional Act of 1992, rather than by secession as provided for in a Constitutional Act of 1991. From these examples, therefore, the argument put forward by Higgins, among others, is that border disputes need to be settled only through negotiation to avoid violent disruption of territorial integrity. In contrast to the conventional view that unilateral secession violates territorial integrity, however, Brilmayer argued that unilateral secessionist claims do not necessarily involve an action against territorial integrity.[226] Territorial integrity properly understood accommodates the principle of self-determination, and the two principles do not pose the inconsistencies generally assumed of them.

Debates relating to unilateral secession often address the wrong issues in evaluating the merits of secessionist claims, by often overlooking important arguments of territorial sovereignty as being within the domain of states which represents their peoples.[227] The international legal order is more concerned with matters between states and not within states

[221] Crawford, J. (1997). 207
[222] *Ibid*
[223] *Ibid*
[224] *Ibid*
[225] *Ibid*
[226] Brilmayer, L. (1991). 217
[227] *Ibid*

which have the right of autonomous decision-making by its people. Based on this, Urrutia argued that the principle of territorial integrity operates between states and hence group secession does not violate the doctrine of territorial integrity. The argument, according to Urrutia, is that the principle of territorial integrity calls upon States to respect the territorial integrity of other States, but does not regulate the internal conduct of groups within States or preclude such internal groups from seceding or declaring independence".[228] He argued that the principle of territorial integrity is well established by a series of consequential rules prohibiting interference within the domestic jurisdiction of states. The principle of territorial integrity is contained in Article 2 (4) of the United Nations Charter stipulates that "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or any other manner inconsistent with the Purposes of the United Nations." This provision is supported by the ICJ case of Nicaragua vs the United State, where the court declared the military activities of the US as an infringement of the principle of territorial integrity, which is linked to the principle of the prohibition of the use of force and non-intervention.

Furthermore, according to Georges Abi-Saab "It would be erroneous to say that secession violates the principle of territorial integrity of the State since this principle applies only in international relations, i.e. against other States that are required to respect that integrity and not encroach on the territory of their neighbours; it does not apply within the State.[229] The ICJ decision of frontier disputes between Burkina Faso and Mali where the court appeared to preserve the principle of *uti possidetis* is more of a confirmation of this view in the sense that the dispute was between states rather than internal secession. Furthermore, this argument could be inferred from the Kosovo case where the International Court of Justice underlined the substantial relevance of the principle of territorial integrity in international law but concluded that the scope of the principle of territorial integrity is confined to the sphere of relations between States. Equally, in its opinion on Quebec's claim to secede unilaterally from Canada, the Supreme Court of Canada stated that international law expects that peoples will exercise the right to self-determination within the framework of existing sovereign states as consistent with the territorial integrity of states. However, in repulsive and undemocratic cases where this is not possible, in exceptional circumstance, the

[228] Urrutia, I., (2012). Territorial Integrity and Self-determination: the Approach of the International Court of Justice in the Advisory Opinion on Kosovo. *Revista d'estudis autonòmics i federals*, (16).
[229] Kohen, M. G., & Kohen, M. G. (Eds.). (2006). *Secession: International Law Perspectives*. Cambridge University Press. P.474

right of secession may be recognised. Thus, the general obligation of respect for the principle of territorial integrity of States is highly central to international law, but such obligation only helps the democratic and inclusive government. The Court further noted that there is no inconsistency between the preservation of the territorial integrity of existing states, including Canada, and the right of a "people" to achieve a full measure of self-determination. A state is entitled to the right to protects its territorial integrity only when the government represents the general interest of the people or peoples resident within its territory equally and without discrimination.

2.9. Human Rights-based Approach to Self-determination

The inclusion of the right to self-determination in the contemporary international human rights regime recognised the right to self-determination as a fundamental human right of the people.[230] The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, created the human right framework of self-determination by addressing the right to self-determination in its common article 1 as the foundation for optimum enjoyment of panoply of human rights contained in the covenants.[231] The transformation of people's right to self-determination into a human right matrix has strengthened its status under international law - building a legal bridge to the future of the right. With this development, claims of violations of the right to self-determination can be assessed based on the record of treatment of minorities and ethnic groups by states.[232] The right of self-determination and its integration with the protection of individual rights allow the right to be considered within the human rights framework. This framework was developed as a coherent legal framework to resolve the potentially competing claims concerning the right of self-determination. In this context, the International Covenant on Civil and Political Rights develops the framework of early versions of Self-determination. Individuals have thus come to be repositories in International Law of the Right to Self-Determination. The human right aspect to Self-Determination of People has been recognized as a fundamental norm of International Law. The aim is to protect communities or groups from oppression and to empower them, and according to Robert McCorquodale, the most

[230] McCorquodale, R. (1994). Self-determination: A Human Rights Approach. *International & Comparative Law Quarterly*, *43*(4), 857-885.
[231] ICCPR
[232] Wolff, J. (2014). 193

appropriate legal framework that meets the demanding requirements is the human rights approach.[233]

According to the human right approach to self-determination, the inclusion of the right to self-determination in the human right corpus is of particular importance because its realization is an essential condition for the effective guarantee and observance of individual human rights and the promotion and safeguard of those rights. It is for that reason that States set forth the right of self-determination in a provision of positive law in the first article of both ICCPR and ICESCR.[234] The condition for the effective guarantee of self-determination as a human right is supported by the fact that the international human rights law has shown itself able to device a mechanism for the safeguard and promotion of general economic, social and cultural rights, which include rights protecting groups such as employees and families.[235]The human right framework of self-determination suggests that even when self-determination is purportedly the issue, it is better to try to address denials of human rights before trying to address the self-determination claims. According to McCorquodale, the State's internal protection of the right of self-determination is now an international concern, which is required to be consistent with the international human rights standards as human rights protection is now a matter not solely within a State's domestic jurisdiction.[236] This view has had its critics who suggested that as a matter of practice, it has succeeded in making self-determination rather more elusive by the lack of accurate delineation and enforcement of human rights. The view that—the existence of representative democracy and freedom of expression as a human right –is the object of the right to self-determination is somewhat problematic. This view only dents the other dimensions and revolutionary power of the right to self-determination in both its external as well as the internal realm. Democracy may not be the most appropriate method to protect the right of self-determination, as "democracy does not merely mean that the human rights and self-determination of people must always prevail: self-determination entails protection of minorities from the abuse of the majoritarian rule and protection of people from external domination.

The codification of the principle of self-determination in common article 1 of the ICCPR and the ICESCR triggered debates on the legal approach to its enforceability as a

[233] McCorquodale, R. (1994). 230
[234] *Ibid*
[235] *Ibid*
[236] *Ibid*

fundamental human right.[237] According to Crawford, the inclusion of the right to self-determination in both part 1 of the covenant suggests that it has a higher legal status in both its political as well as the economic, social and cultural aspects.[238] Paragraph 2 of article 1 of the covenants particularly captured the economic aspect of the right to self-determination by entrusting all peoples the right to self-determination by which they freely dispose of their natural wealth and resources in their best interest that will bring about development.[239] Furthermore, Article 25 of the ICESCR went further to reinforce the people's economic sovereignty over their natural wealth and resources as the cardinal pillar in the exercise of external economic self-determination.[240] However, the legal debate on the enforceability of these provisions remains unresolved, with two distinct opinions on the enforceability of the right. There is an increasing body of literature debating the issue of the legal enforceability of human rights that includes economic, social and cultural and third-generation rights such as the people's rights to self-determination. In his article regarding the binding nature of the Universal Declaration of Human Rights (UDHR), Van der Vyver argued on all human rights having an equivalent essential character of being universal, indivisible and inviolable, and thus, the right to self-determination is a universal and inviolable human right that is enforceable just as other human rights.

Stressing on the enforceability of all human rights, Van der Vyver buttressed his argument by citing the 1993 Vienna World Conference Endorsement that all human rights are universal, indivisible and inviolable.[241] In his contribution to this debate, Richard Lillich**,** however**,** asserted that it would be an overly enthusiastic assertion to suggest that all human rights are equal and thus constitute a peremptory norm of international law.[242] In other words, the mere insertion of rights such as self-determination in the covenants is not an automatic supposition that it is universal and enforceable. In another instance, when confronted with the question on the legal nature of self-determination, the ICJ in its *Advisory opinion on the legality of the creation of a wall in the occupied Palestinian territory*[243] noted that the inclusion of the right into article 1, reinforced its legal status as a fundamental human right

[237] Farmer, A. (2006). 159
[238] Crawford, J. (1997). 207
[239] *Ibid*
[240] International Covenant on Economic, Social and Cultural Right (1966).
[241] Van der Vyver, J. D. (2008). 'The Binding Force of Economic and Social Rights Listed in the Universal Declaration of Human Rights'. *Hamline J. Pub. L. & Pol'y*, *30*, 125.
[242] Lillich, R. B. (1985).' Invoking International Human Rights Law in Domestic Courts'. *U. Cin. L. Rev.*, *54*, 367.
[243] ICJ *Advisory Opinion on the Legality of Creation of a Wall in the Occupied Palestinian Territory*

designed to be enforced.[244] The covenants characterised the right to self-determination as a democratic right to participate in one's self-government and a tool for the realisation of other fundamental socioeconomic human rights such as the right to education, health care, social security.[245] On this point, Javid Rahman suggested that the link between the right and the fundamental human rights all points to the significance of the right as an enforceable human right. The intertwined relationship between the right to self-determination and, for instance, the right to health care and education under the economic, social and cultural rights makes the right even more universal, indivisible and inviolable.[246] Oloka-Onyango further cited the relevance of self-determination in the application of human rights as contained in the 1948 Universal Declaration on Human Right. He argued that although the UDHR did not mention the right to self-determination explicitly, however, it alluded to the right by entwining it into economic and social rights.[247] The UDHR in article 22 promotes the realization of economic, social and cultural rights through national effort and international cooperation for the development of an individual's dignity.[248]

2.1. Right to Economic Self-determination under the UN Legal Documents

With the current global economic order becoming central to modern international relations, the post-colonial states increasingly feel subordinated in crucial areas of economic matters. The application of the right to economic self-determination becomes even more challenging among the former colonial African states. After the UN General Assembly adopted the Declaration on the Granting of Independence to Colonial Countries and Peoples in 1960, the reference to self-determination in the resolution gave birth to a host of other consanguine UN General Assembly Resolutions and international Conventions on the legal right to economic self-determination. The UN assembly adopted resolution 1515 (XV) on The Sovereign Right of States to Dispose of Their Wealth and Natural Resources of 15 December 1960,[249] and Resolution 1803 (XVII) on States' permanent sovereignty over those natural resources of 14 December 1962.[250] In yet another declaration regarding the economic

[244] *Ibid*
[245] Farmer, A. (2006). 159
[246] Rehman, J. (2010). *International Human Rights Law*. Pearson Education.
[247] Oloka-Onyango, J. (1999) 'Heretical Reflections on the Right to Self-Determination: Prospects and Problems for a Democratic Global Future in the New Millennium'. Am. U. Int'l L. Rev., 15, 151.
[248] *Ibid*
[249] Resolution 1515 (XV) Sovereign Right of States to Dispose of Their Wealth and Natural Resources of 15 December 1960
[250] Resolution 1803 (XVII) Permanent Sovereignty Over those Natural Resources of 14 December 1962

self-determination, the general assembly adopted resolutions 3201 and 3202 (S-VI) of 1 May 1974 on the Establishment of a New International Economic Order and the related Programme of Action, and resolution 3281 (XXIX) of 12 December 1974 on the Charter of Economic Rights and Duties of States. The Declaration on the Establishment of a New International Economic Order envisioned an NIEO that will operate in international cooperation and on the basis of sovereign equality and the removal of the disequilibrium that exists between developing and developed countries. In the Declaration, the world community recognized neo-colonialism as an impediment to the "full emancipation" of developing countries. Another important UN resolution 2542 (XXIV) of 1969 of the Declaration on Social Progress and Development was adopted by an overwhelming majority vote of 199 votes to zero, with two abstentions.[251] The resolution demanded a robust mobilization of the national resources and wealth in a proper way that will ensure social and economic development.[252]

These resolutions have caused a considerable shift in the UN focus from political crises to programmes devoted to solving the global socio-economic challenges. The shift in policy direction showed more clearly the growing demands of the developing, in particular, the opposition from the states who feel subjugated in the global economic system. Among the General Assembly resolutions adopted to address the power asymmetrical economic power and people's right to economic self-determination includes the 1962 resolution 1803 (XVII) on the Permanent Sovereignty over Natural Wealth and Resources.[253] Debating on the relevance of resolution 1803, Pereira and Gough argued the adoption of resolution 1803(XVII) was envisioned to offer the states a chance to use their resources to economically empower their people for economic and social development without any external control.[254] The resolution was projected to protect the people's right to economic self-determination and sovereignty over natural resources.[255] In 2005, in the ICJ decision in *Case concerning armed activities on the territory of the Congo (the Democratic Republic of the Congo v. Uganda)*[256] the court addressed the illegal exploitation of natural resources of the DRC by the Ugandan

[251] Assembly, UN General. "Declaration on Social Progress and Development." 1969. Available on: http://www.ohchr.org/Documents/ProfessionalInterest/progress.pdf (last accessed on 7th Oct 2017)
[252] *Ibid*
[253] A/RES/XVII/1803 Permanent Sovereignty over Natural Wealth and Resources 1962. Available on: http://www.ohchr.org/EN/ProfessionalInterest/Pages/NaturalResources.aspx
[254] Pereira, R., & Gough, O. (2013). Permanent Sovereignty over Natural Resources in the 21st Century: Natural Resource Governance and the Right to Self-determination of Indigenous Peoples under International Law. *Melb. J. Int'l L.*, *14*, 451.
[255] *Ibid*
[256] *Case Concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*

troops. The Court found that although it cannot uphold the contention of the DRC that Uganda violated the principle of the DRC's sovereignty over its natural resources, however, it recognised the significance of the principle of permanent sovereignty over natural resources as expressed in General Assembly resolution 1803 (XVII) of 14 December 1962.[257] This, although practitioners such as Hyde viewed the purpose of the resolution from a different perspective; he interpreted the resolution as being directly involved in colonialism with no direct connection with the discussion of the meaning of self-determination and how it should affect the relationship between countries.[258] However, the application of resolution 1803, as will be discussed below suggests its meaning link to economic self-determination.

Another economic self-determination related resolution, the General Assembly adopted resolution 3281 for the Charter of Economic Rights and Duties of States.[259] Reflecting on this resolution, Chatterjee remarked that the resolution formulates specific rules regarding the economic and social activities among the states intending to regulate and promotes development in the economic and social affairs of the states and peoples.[260] Some of the essential provisions aimed at protecting the economic self-determination of states include, for example, article 2 (b) of the charter of economic right and duties of states, which gives States the right to regulate the activities of multinational corporations and subjected foreign corporations to the host countries' laws, regulations and social policies.[261] Although the resolution intended to assist countries in creating economic policies that best suits their interest, however, as suggested by Chatterjee, the resolution is as good as a dead letter as its implementation by developing countries always proved to be unsuccessful.[262] Efforts by the third world countries to nationalise or expropriate had been restrained by legal, economic and political pressures of foreign direct investments, often backed by the foreign state from where the foreign enterprise came from.[263] For example, the Libyan Arab Republic in the 1970s attempted to invoke article 2 (c) to nationalize Texaco Oil Company without payment of compensation to the Company was unsuccessful[264] owing to the strong support for the

[257] GA Res on Permanent Sovereignty over Resources. 238
[258] Hyde, J. N. (1956). Permanent Sovereignty over Natural Wealth and Resources. *Am. J. Int'l L.*, *50*, 854.
[259] *Ibid*
[260] Chatterjee, S. K. (1991). The Charter of Economic Rights and Duties of States: an Evaluation After 15 Years. *The International and Comparative Law Quarterly*, *40*(3), 669-684.
[261] *Ibid*
[262] *Ibid*
[263] Atsegbua, L. (1993). Principle of Permanent Sovereignty over Natural Resources and Its Contribution to Modern Petroleum Development Agreements. *Journal of the Indian Law Institute*, *35*(1/2). Pp.115-126.
[264] *Texaco Overseas Petroleum Co. v. Libya. Int'l Arbitral Award*, 104 J. Droit Int'l 350 (1977)

protection of foreign-owned property[265] under the international customary law.[266] Despite that being the case, the resolution remained a vital part of the law of economic self-determination. Although not legally binding, the wide recognition and adoption of UN General Assembly resolutions on this particular subject matter indicate an established state practice as upheld by the ICJ in the *North Sea Continental Shelf Cases.*[267]

2.2. Economic Self-determination and the Principle of Permanent Sovereignty over Resources

The principle of permanent sovereignty over natural resources was first raised by the Chilean delegation at the 8th Session of the Human Rights Commission working on the Draft International Covenants on Human Rights in pursuance of the General Assembly Resolution.[268] After a long debate, the commission's working committee agreed to include in the draft covenants that: The right of the people to self-determination shall also include permanent sovereignty over their natural wealth and resources and in no case may a people be deprived of its subsistence on the ground of any rights that may be claimed by other states.[269] The goal of the resolution, according to Lawrence**,** was to restore the sovereignty of the former colonial territories and people, which will give them control over their resources. However, a controversy has arisen as to the precise legal status of the resolution. Among the crucial debate on the application of the right to permanent sovereignty right has been on the legal beneficiary and mode of achieving the right.[270] In other words, where and how the control and judicious use of natural wealth and resources applies. This debate has a long history dating back to the early formulation of the self-determination-related principle of Permanent Sovereignty over Natural Resources.[271] The working committee on permanent sovereignty over natural resources debated about the meaning and legal implication of the expression 'all people' used in the document.[272] The United Kingdom and the United States delegates suggested the expression 'the right of peoples' to mean the right of sovereign states

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[265] Chatterjee, S. K. (1991) 260

[266] Nicholson, F. J. (1964). The Protection of Foreign Property under Customary International Law. *BC Indus. & Com. L. Rev.*, *6*, 391.

[267] *North Sea Continental Shelf, Judgment I.C.J. Reports 1969, p.3. Available on: http://www.icj-cij.org/files/case-related/51/051-19690220-JUD-01-00-EN.pdf (last accessed on 7th Oct 2017)*

[268] Atsegbua, L. (1993). 263

[269] *Ibid*

[270] Hyde, J. N. (1956). 258

[271] *Ibid*

[272] *Ibid*

rather than groups.[273] The literal interpretation of the phrase 'all peoples', in the Higgins' account, can simply be construed to be non-state groups, and may also refer to as the right of all peoples within a geographical, political unit.[274]

According to Hans Morten Haugen, the collective management of resources and people's right to self-determination over resources is desirable and can be optimized when everyone is given a chance to participate in the economic decision-making process and is adequately informed about the long-term consequences and the actual risk, not only the opportunities or benefits involved in the program.[275] He mentioned article 25 (a) of the ICCPR, which specified that the right to participate in the conduct of public affairs should be done either directly or indirectly through the people's representatives. The collective participation of individuals can be exercised either directly or through representative government. However, the indirect participation through representative government must follow a process of free and prior informed consent (FPIC) which is a comprehensive consultation process on policy reforms or disposition of natural resources. This can be more important on decisions that affect the general lives of the people, particularly in a relationship with external actors, where the collective participation of individuals through FPIC is the only guarantee against the clash of interests.[276] The ICJ in the *advisory opinion on a Western Sahara case* brought to the forefront the very essence of the right to self-determination as the free and genuine expression of the people's will.[277] Faced with the territorial disputes between Morocco and Mauritania over Western Sahara, the ICJ addressed the issue of Western Saharawi's right to self-determination on their international and internal status. The court prescribed free and genuine expression of the Saharawi's will as sacrosanct for the exercise of their right to self-determination.[278]

The exercise of permanent control over natural wealth and resources belongs to peoples, and the state is only exercising a fiduciary function as the custodian of the right.[279] Hence, the exploitation of lands and resources without people's consent may constitute a

[273] *Ibid*
[274] Higgins, R. (1965). The Development of International Law by the Political Organs of the United Nations. In *Proceedings of the American Society of International Law at its Annual Meeting* (Vol. 59, pp. 116-124). Cambridge University Press.
[275] Haugen, H.M. (2015). 'Peoples' Right to Self-determination and Self-governance over Natural Resources: Possible and Desirable?' *Nordic Journal of Applied Ethics Vol 8, No 1, 3-21.*
[276] *Ibid*
[277] *Ibid*
[278] *Ibid*
[279] Miranda, L. A. (2012). 'The Role of International Law in Intrastate Natural Resource Allocation: Sovereignty, Human Rights, and Peoples-based Development'. Vanderbilt Journal of Transnational Law, Vol. 45, No. 3

threat to their way of life and culture and a denial of their rights to economic self-determination. In the *Lubicon Lake Band case*, Lubicon Lake Band asserted that Canada had violated its economic self-determination and the right to dispose of its natural resources, by appropriating part of the Band's territory to grant interests in gas and oil exploration to private corporations. The Lubicon Lake Band is a self-identified, relatively autonomous, socio-cultural and economic group in northern Alberta. The people alleged that government officials and corporations are using the domestic political and legal process in Canada to execute their plan. Although the claim was dismissed on the jurisdictional ground that self-determination, as defined by the Optional Protocol, could not be invoked by an individual when the alleged violation concerns a collective right, however, the Committee reaffirmed people's right to self-determination. The Committee recognizes the provisions of the covenant in most resolute terms on people's right of self-determination and its right to dispose of its natural resources, as an essential condition for the effective guarantee and observance of individual human rights and the promotion and strengthening of those rights.[280]

The inherent right of people to freely express their wills and participate in the collective economic decision-making was similarly reaffirmed in the Banjul Charter that in no case shall the state exercise any power that goes against the general interest of the people.[281] Although, other provisions are suggesting the state as the bearer of this right, such as the Charters on Economic Rights and Duties of States that considered the state as the internationally recognised legal bearer of the right to represent its people in all internal and external affairs.[282] Even with that, however, the role of the state here can equally be interpreted to be a representative political body that constitutionally gains its mandate to represent and serve the general interest of the people. Therefore, the expression "all peoples" as adopted by international legal instruments will be interpreted here as the rights of all people to collectively manage and control their natural resources either directly or indirectly through their representative political body. While the phrase suggests that the right inherently belongs to collective individuals in the community rather than the state, to Makinson however, as a general principle of law, the state is constitutionally considered the ultimate decision-making authority that is responsible for the control and organisation of its internal

[280] *Chief Bernard Ominayak and Lubicon Lake Band v. Canada*, CCPR/C/38/D/167/1984, UN Human Rights Committee (HRC), March 1990. Available at: https://www.refworld.org/cases,HRC,4721c5b42.html (accessed 18 February 2020)
[281] Farmer, A. (2006). 159
[282] Weston, B. H. (1981). The Charter of Economic Rights and Duties of States and the Deprivation of Foreign-Owned Wealth. *The American Journal of International Law*, *75*(3), 437-475.

and external affairs.[283] The vesting of absolute decision-making authority to the state will make it difficult to protect the interest of the people in the likely event of misappropriation of the resources by their corrupt government.[284]

2.3. Economic Self-determination and the Economic, Social and Cultural Rights

One of the decisive moments in the application of people's right to self-determination in its economic dimension is the provision regarding the state's legal responsibility to safeguard people's economic and social rights and preserving their means of subsistence. The objective of permanent sovereignty over natural resources is not only to safeguard people's natural resources but also to protect their collective interests as well as promote economic policies that will enhance people's means of subsistence that positively impact their economic, social, political and cultural lives. According to Agbakwa, the state's legal responsibility concerning the right, including economic self-determination and permanent sovereignty over resources can be measured by its provision of social welfare, which must equitably reflect the available resources. Social welfare here includes economic, social and cultural rights, as well as civil and political rights.[285] The state's legal responsibility on the actualization of people's economic self-determination starts with the task of ensuring prudent economic policy and judicious utilization of resources to enhance people's social and economic lives and safeguard their fundamental human rights.[286] According to the United Nations Human Rights Committee,[287] the effective application of economic self-determination is a prerequisite for the enjoyment of individual human rights because it provides the necessary and essential condition for the collective exercise of permanent sovereignty over resources and its utilisation in the best interest of the people.[288] This position is further clarified in Article 2 (1) of the ICESCR which provided that state parties are to take necessary steps, especially on economic and technical respects to ensure the

[283] Makinson, D. (2001). *Rights of Peoples: Point of View of a Logician*. 1988. Philip, A. (ed.), *Peoples' Rights*. Oxford University Press
[284] *Ibid*
[285] Agbakwa, S. C. (2002) Reclaiming Humanity: Economic, Social, and Cultural Rights as the Cornerstone of African Human Rights. *Yale Hum. Rts. & Dev. LJ*, *5*, 177.
[286] *Ibid*
[287] United Nations Human Rights Committee. Available on: http://www.ohchr.org/EN/HRBodies/CCPR/Pages/CCPRIndex.aspx (last accessed on 05/05/2017)
[288] *Ibid*

maximum use of resources to realise the individual human rights as contained in the covenant by all possible means.[289]

From the above article 2 (1) of the ICESCR, it is trite that the state has to ensure adequate protection of the people's means of subsistence and implementation of the social and economic rights, to guarantee the optimum application of people's right to economic self-determination.[290] The provision on the prohibition against deprivation of peoples means of subsistence as contained in paragraph 2 of the covenants, will, therefore, read as; a legal obligation on the state to preserve the welfare rights. These welfare rights include rights to social security, job security, health care system, education and housing.[291] These sets of legal rights, as suggested by Kalantry et al., are the indicators to measure the compliance with the obligation of the state for the implementation of the right to internal self-determination under international law.[292] The Canadian Supreme Court clarified the scope and application of this internal dimension of the right to self-determination in the *Re Secession of Quebec.*[293] The court, while deciding on the validity of the unilateral secession of Quebec from Canada, declared that Quebec could not unilaterally secede from Canada; however, it has the right to internal self-determination which includes the pursuits of its political, economic, social and cultural development.[294] Although there is no definite standard of application of these internal aspects of the right to self-determination, however, it is commonly seen to be exercised by the enjoyment of those mentioned above individual human rights, that is, the economic, social and cultural rights, as well as civil and political rights.[295]

Summary of the Chapter

From the discussion so far, it is clear that the principle of self-determination has generated extensive debates on both the content and scope of the right from the colonial to the post-colonial era. The principle has featured in several international legal instruments including the UN Charter, establishing the legal and political ground, which former colonial

[289] ICESCR
[290] Agbakwa S.C. (2002) 285
[291] Van der Vyver. (2008) 241
[292] Kalantry, S., Getgen, J. E., & Koh, S. A. (2010). 'Enhancing Enforcement of Economic, Social, and Cultural Rights using Indicators: A Focus on the Right to Education in the ICESCR'. *Human Rights Quarterly*, *32*(2), 253-310.
[293] *Reference re Secession of Quebec, [1998] 2 S.C.R. 217*
[294] *Ibid*
[295] French, D. (Ed.). (2013). *Statehood and Self-determination: Reconciling Tradition and Modernity in International Law*. Cambridge University Press.

territories broke from the yoke of colonialism and became independent states.[296] Although the colonial conception of self-determination has attained the level of *jus cogens*, however, serious debates exist concerning the post-colonial era legal status of the right and the interpretation of "people" and its implications in an increasingly global world.[297] The adoption of the right in one of the most important contemporary international human right instruments, that is, the ICESCR and the ICCPR, offered a new dimension to the debate on the principle of self-determination. The common article 1 of the twin covenants provided: "all peoples have the right of self-determination. By virtue of that right, they freely determine their political status and freely pursue their economic, social and cultural development.[298] The implications of this provision are twofold. First, it implies the continued recognition of self-determination beyond the decolonization context, despite critics arguing against the application of the right outside of the decolonization context. Second, it places the right to self-determination within the corpus of international human rights law, derailing from the colonial character of the right to assume a "universal character" as a civilising mission of liberal individualism.

[296] Anaya, S. J. (1993). Contemporary Definition of the International Norm of Self-Determination. *Transnat'l L. & Contemp. Probs.*, *3*, 131.
[297] Katona, D. (1998). 23
[298] UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at: https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx (Last accessed 28th March 2019)

3. Chapter Three: Sovereign Debt, IFIs and the Application of Economic Self-determination in the New World Economic Order

This chapter presents the second body of literature on sovereign debt operation vis-à-vis the application of the right to economic self-determination as a principle of international law. The chapter examines the debate on the international financial institutions growing influence and the implication in the present-day New World Economic Order. Part of the literature is drawn from other disciplines covering international economic law, globalism and International financial institutions. The chapter reviews the international financial institutions and their lending terms and conditions, which is at the heart of the controversies and challenges in the debt recipient states. The insights that are derived from this interdisciplinary literature are synthesised to construct and provide a useful overview of the existing knowledge on the modern international financial debt bondage on the application of self-determination in former colonial territories. Thus, the chapter consists of a review under separate headings of the cross-disciplinary analytical framework.

3.1. The International Financial Institution's Lending Conditionality: Globalism vs. Economic Self-determination

The growing debt profile and the multiple layers of conditionality in the less developed countries continue to generate great concern about the international financial institution's role in the countries. As the debt crisis spread from country to country, critics of the international financial institutions are arguing on the harmful effect of the sovereign debt conditionality in economic, social and political spheres of less developed countries. Scholars, mostly the exponents of the dependency theory, argued strongly against the financial institutions, particularly the IMF, which are a powerful instrument of imperialism in the hands of the Western economies. According to some of the critics such as Asad Ismi, the activities of these international financial institutions only help impoverished less developed countries more. Asad Ismi argued that the Bretton Woods Institutions are instruments of the United States' foreign policy put in place to integrate the former colonial territories into the U.S-dominated global capitalist system through financial assistance conditioned on adopting

Open door economic policies.[299] However, not all researchers agreed with the critics' postulations regarding the negative effect of sovereign debt conditionality. The following section is a snapshot of the extant literature on the debate and arguments for and against the role of debt conditionality imposed by the international financial institutions, namely the IMF and World Bank.

Few subjects have polarized people throughout the world as much as the vigorously pursued globalisation and globalism by the IFIs. Whilst some commentators see the policies as a welcomed development, bringing exceptional opportunities and benefits to all people far and wide the globe, its critics, fault the policies as the source of untold problems, from the destruction of native cultures to increasing global economic hegemony.[300] In his work on globalism and globalisation, Joseph Stiglitz addressed the issue of global economic inequality and the reason why the policies championed by the IFIs brought little benefit in many countries, against the enormous benefit in a few countries. Why have there been these vast differences in experiences? According to Stiglitz, the states that have managed the policies on their own, such as those in East Asia, have, by and large, ensuring that they reaped enormous benefits and that those benefits were equitably shared; they were able substantially to control the terms on which they engaged with the global economy. By contrast, the countries that have, by and large, had globalization managed for them by the International Monetary Fund and other international economic institutions have not done so well. The problem is thus not with the policies, but with how it has been managed.[301] Adding to this point, Stiglitz explained that international financial institutions had pushed the ideology of market fundamentalism –that is both bad economics and bad politics. The policies are built around how markets work which, according to Stiglitz, do not hold even for developed countries, much less in the developing countries.[302] The IMF has pushed these economic policies without a broader vision of society or the role of economics within society, and it has pushed these policies in ways that have undermined emerging democracies.

The establishment of the International Financial Institutions marked the beginning of a new era of global economic governance led by international financial institutions, which has caused a fundamental shift in national economic sovereignty and international economic

[299] Ismi, A. (2004). *Impoverishing a continent: The World Bank and the IMF in Africa*. Ottawa: Canadian Centre for Policy Alternatives.
[300] Stiglitz, J. (2002) Globalism Discontents. Available at: https://www.mskenna.com/uploads/8/4/0/9/84096706/globalism_discontents_stiglitz.pdf (Last access on 3rd March 2020)
[301] *Ibid*
[302] *Ibid*

law at large. According to Justice Higgins, the era of globalization represents the reality that we live in when the walls of sovereignty are no protection against the movements of capital, labour, information and ideas-nor can they provide adequate protection against harm and damage. Globalization is a broad concept with a wide range of definitions, referring to the various processes of economic, social, cultural, and political integration across national borders and the acceleration of the movement of goods and services, people, capital, and information in ways that hamper state's ability to regulate all activity on its territory as a unit of social organization.[303] Cohen explained the rise of international financial institutions such as the World Bank and IMF as the period when the International order experienced a dramatic shift from the hitherto Westphalian sovereign-state control, to a new global system governed by global institutions.[304] Key political, economic and legal decisions are being made beyond the purview of national legislatures, while states appeared increasingly unable to decide and pursue their domestic goals owing to the international obligations created by those global institutions.[305] For many states borne out of decolonisation, the shift from sovereign-state paradigm to the new global economic system created a state of affairs reminiscent of those obtained in the heyday of imperialism.

The International Monetary Fund and World Bank have come under strong accusations for violating the freewill and general interest of their borrowers through imposing lending terms and conditions. The IFIs are accused of imposing policies in a similar manner to the old colonial civilising mission and approach of "do what we tell you to do, and you will prosper."[306] According to Anghie, the former colonial powers used the concept of good governance as a powerful and universal appeal –all peoples and societies would indeed seek good governance in much the same way that all peoples and societies were seen as desiring development. Like the colonial rule, most of the economic and social problems confronting the less developed are tagged by the IFIs as the issue of bad governance and therefore offer the moral and intellectual grounds for structural policies changes by the IFIs to manage the affairs of the countries. In less developed countries, sub-Saharan Africa in particular, the international financial institutions, have, within their lending terms and conditionality, sought to ostensibly promote good governance and address the mess created by bad governance.[307]

[303] Ku, J. and Yoo, J. (2013). Globalization and Sovereignty. *Berkeley J. Int'l L.*, *31*, p.210.
[304] Cohen, J. L. (2012). *Globalization and Sovereignty: Rethinking Legality, Legitimacy, and Constitutionalism*. Cambridge University Press.
[305] *Ibid*
[306] Stiglitz J. (2002). 300
[307] Anghie, A. (2007). *9*

According to Kovach & Lansman, many of the less developed countries face an unacceptably high and rising number of political and economic conditions to gain access to World Bank and IMF loan, as a result of which they become unable to control and govern their affairs freely.[308] They argued that regardless of whether the institutions' lending conditions are negotiated or imposed, the appeal of financial credit has played into the hands of the financial institutions by giving them more power to influence and determine the internal affairs of borrower states.

The seemingly unending debate is the sovereign debt conditionality advertent disruption of the system of government of the less developed countries. According to Malanczuk, the creation of the institutions followed the underlying philosophy of reduction of national barriers and impediments for international trade and global economic order.[309] In other words, the *raison d'etre* of the institutions and the ultimate goal of the institutions is about the relaxation of national barriers for free-trade, which could affect the system of government of the less developed countries. Vaughan Lowe, also suggested the creation of the institutions by the United States and the UK was to restructure the international economy and ensure equal access to raw materials across the world and the introduction of the principle of free trade.[310] Although this view was rebuffed earlier by Moghenthau at the Bretton woods conference in 1944, where he argued the creation of the IFIs was to provide a platform through which all nations of the world will come together in the spirit of goodwill and mutual trust to help one another in economic development for a more peaceful world.[311] He also referred to the institutions as the machinery by which people living everywhere in the world can exchange freely on a fair and stable basis the goods that they produced.[312] However, according to Biersteker, regardless of the intentions of the creation of the international financial institutions, the institutions turned out to be the spearhead of a new global economic governance.[313]

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[308] Kovach, H., & Lansman, Y. (2006). World Bank and IMF Conditionality: a Development Injustice'. *A Report of the European Network on Debt and Development (Eurodad)*.

[309] Malanczuk, P. (2002). *Akehurst's Modern Introduction to International Law*. Routledge. p27

[310] Vaughan, L. (2007) International Law. Oxford University Press

[311] Closing Address to the Conference. By Henry Morgenthau, Jr. Available on: https://www.cvce.eu/content/publication/2003/12/12/b88b1fe7-8fec-4da6-ae22fa33edd08ab6/publishable_en.pdf (last accessed on 5th Oct 2017)

[312] *Ibid*

[313] Biersteker, T. J. (Ed.). (2019). *Dealing with Debt: International Financial Negotiations and Adjustment Bargaining*. Routledge.

3.2. International Financial Institutions Lending Policies and Conditionality

Initially established at the 1944 Bretton Woods Conference with a post-war rebuilding purpose, the role of the international financial institutions transformed into a different project of which many international scholars see as imperial in nature. The IMF was established to stabilise exchange control, particularly in the war-turned European countries as well as promote international monetary cooperation and others.[314] The World Bank was equally established to provide long term financing for post WW2 reconstruction and development project.[315] With time, the institutions became more central to the international economic and financial affairs and eventually expand their roles and frontiers.[316] The primary role of the World Bank was upstaged and shifted from reconstruction to development and, in the 1950s, turned its attention to the third world countries. By the early 1970s, the IMF has also assumed responsibilities more akin to those of the Bank, including different initiatives for poverty eradication.[317] The lending policies and conditions became almost like a trademark to IMF and formed part of its article of agreement in articles 5 (3).[318] The standard policies adopted by the IFIs are the orthodox neoliberal economic policies.[319] These include stabilization and adjustment which entail a chain of measures designed to reduce and transform the state economic intervention, with an increased reliance on market mechanisms, more frequent use of monetarists policy instruments and a shift in public-private relations in the direction of greater support for, transfer of ownership and management of resources to private individuals and increased reliance on the private sector.[320]

Significant devaluation of the national currency is frequently required, along with deliberate efforts to control inflation by limiting consumer demand. Severe restraints on government spending are common, as are efforts to limit growth in the supply of money in the economy. These policies are imposed mainly on borrower countries, which by and large stripped the borrower countries of their right to economic self-determination and violated their sovereignty. Biersteker argued that the current neoliberal economic policies, pursued by

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[314] Lichtenstein, C. C. (2003). International Economic Law. By Andreas F. Lowenfeld. Oxford, New York: Oxford University Press, 2002. Pp. xliv, 776. $125,£ 80, cloth; $45,£ 30, paper. *American Journal of International Law*, *97*(4), 994-998.

[315] Biersteker, T. (2019) 313

[316] Lichtenstein C. C. (2003) 314

[317] Mosley, P., Harrigan, J., & Toye, J. F. (1995). *Aid and power: The World Bank and Policy-based Lending* (Vol. 1). Psychology Press.

[318] Articles of Agreement of the International Monetary Fund. Available at: https://www.imf.org/external/pubs/ft/aa/index.htm (last accessed on 3rd Sept 2019)

[319] Biersteker, T. J. (2019) 313

[320] *Ibid*

the Bretton Woods institutions, undermined the sovereignty of many of the former colonies. It reduced the countries into external subordination by controlling their budget spending rights and natural resources.[321]Outlining the impact of the growing roles of the IFIs, Kahler suggested that the introduction of financial assistance conditionality and standby arrangement policy is one of the greatest means by which the institutions exert influence on the internal and external policy of the indebting countries.[322] Kahler asserted that the IFIs policies exert an enormous amount of influence beyond national boundaries and places pressure against vulnerable countries to alter their national economic policies in the shape and pattern proposed by the institutions that are contrary to international law principles of state sovereignty and self-determination.[323] More so, the repayment of the debt is not the main driver for the conditionality; rather, the institutions have a strong interest in shipping their preferred policies onto the borrower countries.[324]

Cohen also shares his view, who argued that the policy of debt relief or restructuring seems paradoxical and another ploy to ensure continuity of debt circle and influence, therefore, the creation of the IFIs only strengthened the global economic imbalance and eroded people's economic sovereignty.[325] However, from the institutions' point of view, the financial lending policies are nothing, but policies designed to help countries lessen their account deficit to more manageable proportions through the implementation of programs that will strengthen their balance of payments while maintaining their growth momentum.[326] In this regard, the World Bank described it as reforms of policies and institutions covering macroeconomic (such as taxes and tariffs), macroeconomic and institutional interventions, all designed to improve resource allocation, increase economic efficiency, growth potential and resilience to shocks.[327] Among the prevailing reasons that support the need for the lending policies, according to Khan and Sharma, the IFIs policies are commitments that essentially serve to provide a safeguard that the borrower country will be able to rectify its macroeconomic and structural imbalances to be able to pay back the loans.[328] Khan and Sharma viewed conditionality as necessary and desirable as a substitute for security in the

[321] *Ibid*
[322] Kahler, M. (1992) 76
[323] *Ibid*
[324] *Ibid*
[325] Cohen, B. J. (2008). The International Monetary System: Diffusion and Ambiguity. International Affairs, 84(3), 455-470.
[326] Weeks, J, F. (1989). 67.Pp 89–90.
[327] Mosley P, Harrigan J, Toye JF. (1995). 67
[328] Khan, M. M. S., & Sharma, M. S. (2001) 'IMF Conditionality and Country Ownership of Programs (No. 1142). International Monetary Fund.

absence of states non-tradable security akin to collateral used by the private bank as security.[329] Furthermore, they argued that economic conditionality is necessary for both parties, for the country, conditionality means more commitment and a higher probability of the success of programs, and for IMF it means stronger protections of resources.

Another vital point made by the IMF is that economic conditionality is necessary because of the lack of proper enforcement mechanisms such as courts that can sanction borrower countries in case of being in default. Jefferey Sachs, however, dispelled these arguments. He asserted that the IFIs economic conditionality and corrective measures rarely lived to the advertised hopes and are often, if not typically, unsuccessful in restoring stability and safeguarding the resources.[330] According to Sachs, aside from the successful loan conditionality cases for the developed countries like Italy, the United Kingdom, and Portugal, several of the remaining programs in countries like Argentina, Brazil, Jamaica, and Tanzania were unsuccessful. Thus, with the repeated lending to regular sets of countries and the lack of explicit success, it can be argued that the claims conditionality serves as a substitute for security in the absence of states tradeable security is unsustainable. Furthermore, a crucial issue regarding the IFIs, as suggested by Allan Drazen is that conditionality often become ineffective and unworkable as it undermines the country's policy ownership and commitment.[331] Policy ownership, in this case, referred to the extent to which a country is interested in pursuing reforms independently of any incentives provided by lenders. In other words, a situation in which the policy content of the program is similar to what the country itself would have chosen in the absence of IFIs involvement.[332]

For khan and Sharma, they pointed out that although it is generally unfeasible to enjoy full ownership in the context of conditionality and often more intricate in pluralistic societies that have multiple stakeholders, however, various measures have been taken to maximize ownership.[333] Khan and Sharma admitted that it is difficult in a pluralistic society to ascertain whose resolution to take between officials that negotiate the program with the IMF or civil society. They, however, argued that borrower countries are solely responsible for lack of ownership in some cases for being eager to agree to programs without being

[329] *Ibid*
[330] Sachs, J. D. (1989). 73
[331] Drazen, A. (2002). 75
[332] Khan, M. M. S., & Sharma, M. S. (2001) 328
[333] *Ibid*

convinced that the associated conditionality is appropriate.[334] They insisted that lending terms and conditionality are freely negotiated and consented by the parties; thus, it cannot be tagged as coercive or imposed.[335] Again, critics and analysts have strongly dispelled this "freely negotiated and consented" view. Skogly opposed the view on debt conditionality being voluntarily negotiated, consented to, and even initiated through a letter of intent formally designed by the borrower country.[336] According to Skogly, the identical similarity of the wordings and style of the intent letters claimed to be initiated by the borrower countries raises more questions about the real authorship of the letters and the credibility of the negotiations.[337] Moreover, the fact that countries who oppose the policies or turn away from them mostly do not receive the funds reveals that the IFIs conditions are the only acceptable policies.[338]

Another key legal debate regarding the IFIs conditionality is the application of the general principle of *pacta sunt servanda* (agreements must be kept) which assumed the agreements between the IFIs and the borrower country imply a waiver of the country's right to react to the socioeconomic circumstance, since legally speaking contracting parties are bound by their contractual terms. Thus, to the IFIs, any concession made in fulfilment of the contractual obligations must be considered voluntary and legally justifiable despite any difficulty along the road, since the borrowers are not under any legal obligation to take loans. This view was, however, criticised that it could only stand to the extent that it does not contradict a more general legal principle that, a legally binding agreement is founded only upon parties giving their free consent. In other words, a country induced into a contract by undue influence shall not be bound by the contract.[339] Because of the severe economic recession, countries often found themselves forced to accept any demand proposed as a lending condition.[340] Nevertheless, the inability of borrower countries to access loans from other sources handed the IFIs the advantage, which they used to influence Countries affected by the economic challenges.[341] In 1983, when Ghana was hit by a severe drought that resulted in a high incidence of hunger, economic depression and massive capital flight, the regime

[334] *Ibid*
[335] Dijkstra, G., & White, H. (2013). *Programme aid and Development: Beyond Conditionality*. Routledge.
[336] *Ibid*
[337] Skogly, S. I. (1993). Structural Adjustment and Development: Human Rights-an Agenda for Change. *Hum. Rts. Q.*, *15*, 751.
[338] *Ibid*
[339] Richards, P. (2006) Law of contract. Pearson Education.
[340] Weeks, J. F. (1989). *Debt Disaster?: Banks, Government and Multilaterals Confront the Crisis* (Vol. 2). NYU Press.
[341] *Ibid*

was compelled, in the absence of any realistic alternative, to turn to the IMF.[342] The regime was unduly influenced into accepting prescriptions, including trade liberalisation, public sector retrenchment, removal of subsidies on food, petrol, education and health, increased taxes, privatisation, adoption of flexible foreign exchange regime and devaluation of the Cedi among others.

Despite the avid criticism of the IFIs lending policies and conditionality socioeconomic impacts, other scholars such as Goldsmith argued that there is no conclusive evidence to support the claim that the international financial credit and assistance has made the less developed countries worse.[343] On the contrary, Goldsmith argued that third world African states had gained more than they have lost by taking the aid and frankly, empirical evidence suggests financial assistance as an insignificant factor affecting African states' ability to govern well. Rather, the financial assistance provides the wherewithal for African states to pay for and carry out many essential public functions; it is only seen as unfavourable, perhaps because the positive effect of aid is small and easily drowned out by other factors.[344] However, according to the director of the Jubilee 2000 coalition, UK, Pettifor, Most African governments remain in hock to their foreign creditors.[345] Debt bondage does not only undermine economic and social development in Africa but also undermines democratic processes. Pettifor suggested that most loan negotiations and agreements are conducted in great secrecy in the express contravention of democratic processes. Pettifor proffered possible solutions to deal with the debt bondage. These solutions consist of the creation of an independent Debt Review Body based on the established concept of arbitration that would guarantee transparency and the participation of civil society within the indebted nation. Any country with debt problems could apply to the UN or the ICJ for an independent review of its debt, and debt cancellation. There should also be a partial or total debt service freeze, and the country could immediately divert all or part of its debt service payments into a UN or the ICJ-run special fund. The UN shall oversee the appointment of an independent

[342] Ghana, ActionAid "Implications of IMF Loans and Conditionalities on the Poor and Vulnerable in Ghana." 2010. Available on: http://www.actionaid.org/sites/files/actionaid/implications_of_imf_loans_and_conditionalities_on_the_poor_and_vulnerable_in_ghana.pdf (last accessed on 16th June 2017)

[343] Goldsmith, A.A. (2001). Foreign Aid and Statehood in Africa. *International Organization*, *55*(1), pp.123-148.

[344] *Ibid*

[345] Pettifor, A. (2000). Will Ending Debt Bondage Lead to Democratic and Economic Self-determination for the People of Africa?. *Cambridge Review of International Affairs*, *14*(1), pp.135-148.

Debt Review Body to act as a binding arbitration panel that would defend the sovereignty of a debtor nation while being fair to creditors.[346]

3.3. The Rise of Chinese Lending Assistance

The Chinese foreign aid and financial credit emerged as another key international financial creditor along with the IMF and World Bank.[347] The Chinese Belt and Road Initiative, also known as One Belt One Road (OBOR), is one of the Chinese economic policies that aim to strengthen Beijing's economic leadership through a vast program of infrastructure building throughout China's neighbouring regions.[348] Launched in 2013, the initiative has become a powerful economic and political force through which China had signed agreements with different states, such as Nigeria where china debt stock stands at $3,175.12 million as of December 31, 2019 (DMO 2020). From the Chinese point of view, contained in the 2006 White Paper on African policy, it disclosed China's ambition to play a more significant role in Africa, with influence based on its great volume of foreign aid to African countries and extensive trade and investment activities.[349] According to this policy, the loan initiative was meant to promote trade and investment with rewards in the process and not intended to interfere with borrowers' domestic affairs. Thus, non-interference in state sovereignty and freedom from "hegemony" has been a theme of Chinese foreign policy. China maintains that it has no right or wishes to interfere in the sovereignty of other nations; thus it can do business with any regime without assessing the internal human right or governance record that is not part of its general agenda. The Chinese financial credit, at least for now, comes with fewer strings attached and some observers in the less developed countries welcome the Chinese effort to promote regional cooperation and development and see room for cooperation between the Chinese initiative and the existing system.

However, there are growing tensions and debates on the potential debt trap and profound loss of autonomy and national self-determination coming with the Chinese loan. What is indeed evident, despite the claims of non-interference in the internal affairs of its indebting states, China is becoming a significant economic and political force in Africa

[346] *Ibid*

[347] Mawdsley, E. (2007). China and Africa: Emerging Challenges to the Geographies of Power. *Geography Compass*, *1*(3), 405-421.

[348] *Ibid*

[349] Wu, C. H. (2012). Beyond European Conditionality and Chinese Non-interference: Articulating EU–China–Africa Trilateral Relations. In *China, the European Union and Global Governance*. Edward Elgar Publishing.

through its financial credit pushed under the One Belt and One Road Initiative.[350] In a relatively recent event, for example, China signed an agreement with Nigeria in 2004; marching up to the big Forum on China–Africa Cooperation (FOCAC) 2006 of African Heads of State Summit in Beijing were china dolls out loans in exchange for more trade and investment opportunities.[351] The agreement between the Nigerian National Petroleum Corporation (NNPC) – the state oil company – signed two agreements with SINOPEC to develop five exploration wells and signed two others with the Nigerian Petroleum Development Corporation and the Nigerian Agip Oil Corporation (NAOC) to develop two oil fields. The Chinese involvement in Nigeria was received with a pinch of salt by a large portion of concerned civil society as another attempt by China similar to IMF and World Bank's, to gain political advantage and control over resources.[352] However, the common view is that at this juncture any specific allegations on the Chinese lending terms and conditionality will be hard to prove, especially from the legal point of view. In general, however, Nigerians continue to be worried about the prospect of Chinese creditors taking over some national assets in the event of repayment default. To allay the fears of concerned Nigerians who had reservations about the loans being given to Nigeria by the China-Exim Bank; the Buhari administration declared that the loan agreement between Nigeria and China had nothing to do with the forfeiture of Nigerian assets to China-Exim Bank in the event of repayment default.

3.4. Summary of the Chapter

To this point, the discussion in this chapter reviewed the major challenges the application of the right to self-determination contemporary in contemporary global economic order where the less developed states increasingly feel subordinated in crucial areas of economic affairs. The chapter reviewed the distinct character of economic self-determination, which enjoys widespread recognition not just as a corollary to political self-determination but as an integral component of the principle of self-determination. The UN General Assembly adopted a host of resolutions and international conventions on the legal right to economic self-determination including the resolution 1515 (XV) on The Sovereign Right of States to

[350] Mawdsley, E. (2007). 347

[351] Du Plessis, A. (2014). The Forum on China–Africa Cooperation, Ideas and aid: National Interest (s) or Strategic Partnership?. *Insight on Africa*, *6*(2), pp.113-130.

[352] Cai, P. (2017). Understanding China's Belt and Road Initiative. Lowy Institute for International Policy. http://hdl.handle.net/11540/6810.

Dispose of Their Wealth and Natural Resources, and Resolution 1803 (XVII) on States' permanent sovereignty over those natural resources. Another key debate reviewed in the chapter is the international financial institutions and the claims for using lending conditionality as an advantage to promote the globalism agenda. The growing debt crisis in developing countries raises concerns about the IFIs role in developing countries. The chapter traced the arguments for and against the international financial institutions on the effect of the sovereign debt conditionality in economic, social and political spheres of less developed countries. Many of the critics argued strongly that the lending conditionality is a powerful instrument of imperialism in the hands of the financial creditors. According to the critics, the implementation of the lending programmes only helps to under the sovereignty and freedom of economic choice of the borrower countries.

4. Chapter Four: Sovereign Debt Regime and the Agitations for Economic Self-determination in Post-independent Nigeria through the Lens of *TWAIL*

This chapter discusses Nigeria's sovereign debt regime and the impact of IFIs lending terms and conditionality on the political, economic and social organisations and the growing agitations for the right to economic self-determination and freedom of economic and political choice. The chapter examines the IFIs lending conditions and the historical aversion of the national economic plan in Nigeria, a history that effectively defines and justifies the claims of economic self-determination in Nigeria. The chapter reviews IFIs past attempts to impose conditionality in Nigeria that created internal strife and backlash, which follow from the subversion of popular mandate. Over the past decades, there has been considerable growth in literature and debate on the debt crisis that became a significant challenge to economic stability, growth and development in Africa. This debate ultimately leads to the discussion regarding national independence and the degree to which Africa is divorced from its historical experiences of colonial rule to establish its political and economic self-determination going forward. In many former colonial African territories, the states are embroiled in acute political, social and economic challenges; this is especially so in plural societies such as Nigeria with complex, multiple and competing ethnic, religious, communal and other sorts of identities and loyalties.

The chapter discusses the economic reform plans set by the financial institutions in Nigeria and the socioeconomic impact of Structural Adjustment Programmes, which are part of the sovereign debt condition. However, the discourse on the sovereign debt challenges in Africa and Nigeria, in particular, is inseparable from the shared history of the colonial experience and struggle to break from the yoke of neo-colonial forces in post-colonial Africa. Thus, the study of the historical episode of the pre-colonial and colonial era is in many respects a useful source of advancing the reconstruction project of international law Theorists including the Third World Approach to International Law. The chapter traces the history of the social and political organisation of Nigeria in the pre-colonial era, to the colonial and post-colonial era, which contextualises the subordinate role played by the state in shaping the destiny of the territory in the context of contemporary sovereign debt conditionality. The chapter examines the accounts from the point of the international political and economic

order to explore the connections between the modern concepts of sovereign debt to neo-colonial relations.[353]

4.1. Historical Background on Pre-colonial Social and Political Structure of Nigeria

The territory known as Nigeria in present-day is located on the west coast of Africa, on the shores of the Gulf of Guinea lying between the parallels of 4° and 14° north and is thus entirely within the tropics. It is bounded on the south by the sea, on the west and north by French territory (Dahomey and the Niger Territory), and on the east by the former German colony of Cameroon.[354] With a population of 180 million, Nigeria is the most populous African country and the tenth most populous country in the world. Its territory of 923.7 thousand square kilometres amounts to less than 3% of the total territory of the African continent, but it has within it, up to 25% of the continent's total population. The entity is made up of people of diverse ethnicity, cultures, languages and norms. It stands out among other countries in Africa and the world because of its ethnic diversity, as there is hardly any other country in the world, which has Nigeria's linguistic and ethnic diversity.[355] Linguists identified 394 distinct linguistic groups within Nigeria. Some of these languages had distinct dialects, of which 125 were identified. Unlike almost any other country in Africa, Nigeria has within its territory, substantial, number of speakers of three, of the five, families of languages found in Africa, namely Afro-Asiatic, Niger-Congo and Nilo–Saharan.

The history of the economic and political organisation of the diverse culture and peoples of Nigeria has been the subject of misrepresentation, given credence to the arguments of those dismissing African nationalism for lack of common historical origin. In contrast, entities and kingdoms existed in Nigeria from the early times.[356] Much like other West African entities, the history of Nigeria has featured many waves of migration and movement of people across the Sahara between the south and north of the desert.[357] In the northern region of Nigeria, close cooperation existed between the Bornu Empire and the seven Habe states (Kano, Daura, Zazzau, Gobir, Katsina, Rano and Biram). During the 12th and 13th

[353] Anghie, A., & Chimni, B. S. (2003). 35
[354] Burns, A. C. (1929). *History of Nigeria*. George Allen and Unwin Limited, London.
[355] Odeyemi, J. O. (2014). A Political History of Nigeria and the Crisis of Ethnicity in Nation-building. *International Journal of Developing Societies*, *3*(1), 1-12.
[356] Usman, Y. B. (1987). The Manipulation of Religion in Nigeria 1977-1987.
[357] Mayowa, A. (2014). Pre-Colonial Nigeria and the European's Fallacy. *Review of History and Political Science*, *2*(2), 17-27.

century, Islam was introduced to the region through the Atlantic route to the Kanem Bornu and the Habe states. The immigration of the Fulani people to the Habe state diversified the states further with the Fulani people becoming major allies to the Hausa, and the two became intertwined through intermarriage. The Habe states continue to develop a more centralised government in the region.[358] A new political system was created in the north during the first half of the nineteenth century. The new political systems were characterized by their centralized and hierarchical structure.[359] The traditional forms of government in Northern Nigeria outside Hausa land varied widely, the Kanuri area of Bornu and the Nupe area were similar to the emirates of Hausa land. In the Middle Belt area, the system of traditional government was divine kingdoms and mostly non-centralised. An essential feature of the political system of the non-centralized state was not the absence of leadership; instead, the emphasis was placed on collective leadership.

The socio-political organisation in the southern region of Nigeria was quite different from what was obtained in the northern region and far more decentralised. For practical purposes, the southern region geographical and socio-political organisation is best divided into the southwest and east. There was monarch operating in the Yoruba kingdoms, Benin kingdoms, Itsekiri kingdom and Aboh kingdom. The Yoruba kingdoms were politically well organized and in the years after 1800, the Yorubas were split into kingdoms of various sizes. The various kingdoms and political organisations were classified as constitutional monarchies, with the power of the leaders and Obas being subject to consent from within the institutions. The leadership was centralized, with a high degree of specialization regarding each function.[360] The political organization of the Southeast region of Nigeria differed. Broadly speaking, the structures were more decentralized than in the political systems to the north and southwest, and the polity was more egalitarian. There were decentralized communities of Ukwan, Urhobo, Isoko and western Ijaw peoples. The intergroup relations in pre-colonial Nigeria, though mistrustful and conflictual at occasions, yet many other social, economic and geographical factors created some forms of cordial relationship and interdependence. There existed trade and commerce relationships, particularly in the exchange of items over which there is comparatively group advantage in its production or procurement, and which has been brought about significantly by nature (environmental and

[358] Stokke, O. (1970). *Nigeria: an Introduction to the Politics, Economy and Social Setting of Modern Nigeria*. Nordiska Afrikainstitutet.
[359] Mayowa, A. (2014). 357
[360] Stokke, O., (1970). 358

geographical variations). Despite such interdependence, ethnicity issues hardly arise. Intergroup relations were also fostered by migrations, socio-religious and cultural matters, even as many had diplomatic and deliberate friendly ties. Colonialism came to alter the social and political organisation of Nigeria.

4.2. The Colonial Legacy and Post-independence Economic Policy in Nigeria

The British colonial rule had opened a new chapter in the history of Nigeria starting from 1861-62 when the Crown Colony of Lagos was established a little earlier before Britain was granted the region between the German Cameroons and French Dahomey (now Benin) in Berlin conference of 1885.[361] With the formalisation of the popularly known scramble and partitioning of Africa in the Berlin Congress of 1884-85, the British colonialist laid claim to coastal areas of the Niger area and named the place Oil Rivers Protectorate before granting a charter in 1886 to the Royal Niger Company to run the territory as a corporate entity or franchise. By 1893, the protectorate was extended and renamed the Niger Coast Protectorate before Britain, later on, revoked the Royal Niger Company's charter in 1899 as a result of the Anglo-French convention of 1898 which recognized Nigeria as a British crown colony.[362] In addition to the invasion and formal annexation of the Lagos Colony and Protectorate of Southern Nigeria in 1906, the Protectorate of Northern Nigeria was also annexed after Governor-general Frederick Lugard subdued the northern emirates at the turn of the century. The British colonialists merged the entities along two geopolitical zones - the Northern Nigeria Protectorate and the Colony/Protectorate of Southern Nigeria, with separate colonial Governors.[363] By 1914, the two protectorates were formal1y amalgamated by the imperialists who took possession and exercised the right of governance, with the office of the Governor-General being the primary institution.[364]

Following the amalgamation of southern and northern Nigeria into one entity, the British colonialist established an administrative system shaped to a large extent by economic considerations and the expansion of position of power and control for its commercial and

[361] Berger, D. (2009). Taxes, Institutions and Local Governance: Evidence from a Natural Experiment in Colonial Nigeria. *Unpublished manuscript*.
[362] *Ibid*
[363] Odeyemi, J. O. (2014). 355
[364] Stokke, O. (1970). 358

economic purposes.[365] The colonial economic policies were structured to fit the British trade and commercial purposes through the expansion of export of raw materials that feeds the industrial needs in Britain and the corporatization and privatisation of colonial governance to multilateral corporations like the Royal Niger Company. The colonial administration unilaterally granted legal rights to corporations, for example, the Shell and British Petroleum (BP) in 1937 awarded the land area of Nigeria as an oil concession, with oil exportation starting in 1958.[366] Very little, if any regard, was paid to the demands of the local population and the native authority was only used as a tool by the colonial power to protect and facilitate the free flow of resources from the territories, for the benefit of the British industrial base. The colonial expansion of economic control came through treaties, contracts or forceful appropriation, which led to the opening up of the hinterland that resulted in a new trading system of export of crops including the three major crops - cocoa, palm produce and groundnuts, which accounted for about 70% of Nigeria's total export in the colonial era.[367] Furthermore, this expansion came at the expense of the colonized people who lost not only control over the economy but also social control, resulting in a progressive dissolution of power. Only a few natives were allowed to participate in governance, and this itself was confined to a small group of native elite who are legally required to be the instrument that enabled the colonial powers to engage in the commerce that was such an imperative of the imperial quest. Economic control, therefore, forms the foundation of colonial administration before political.

The British administration ended, and Nigeria was granted independence on 1 October 1960, but the colonial power maintained strong control over the Nigerian economy mainly due to the effect of the economic policies of the colonial administration. Up until 1963, the Nigerian government was, to some degree, controlled by the Crown before it declared itself a republic and changed its political status while remaining a member of the Commonwealth of Nations.[368] Despite the formal termination of British colonial rule in Nigeria, the colonial policies continue to affect the long-term trajectories of economic self-determination in Nigeria. The opening up of the interiors of Nigeria for colonial export of raw materials continue to resurface as "open door policy" or free-market policies entrenched in

[365] Adeyeri, O., & Adejuwon, K. D. (2012). The Implications of British Colonial Economic Policies on Nigeria's Development. *International Journal of Advanced Research in Management and Social Sciences*, *1*(2), 1-16.
[366] Onimode, B. (1978). Imperialism and Multinational Corporations: A Case Study of Nigeria. *Journal of Black Studies*, *9*(2), 207-232.
[367] Adeyeri, O., & Adejuwon, K. D. (2012) 365
[368] Usman, Y. B. (1987). 356

the post-colonial Nigeria decades after the colonial era.[369] For Nigeria, like most other ex-colonial African territories, the economy of the country remained firmly integrated into the neo-colonial order and heavily dependent on the external economic players. Decades after the declaration of independence from the colonial rule, Imperialist domination persists in many sectors of the economy either through sole foreign proprietorship or joint ventures between multinationals and Nigerian governments such as the Shell/NNPC partnership.[370]

A combination of the colonial exploitation and socio-political instability of the post-colonial era led to internal crises and civil war in 1967, where the eastern region of Nigeria declared their resolve to secede from Nigeria under the Biafra movement for secession and form an independent Biafra republic.[371] The specific effects of colonialism in the post-colonial Nigeria internal crisis are the perpetuation of neo-colonial agenda by the foreign monopoly capital that inundated vital economic sectors such as petroleum, mining and manufacturing. Consequently, the internal strife led to the formation of the second republic and the introduction of a presidential constitution on October 1, 1979, which became an important epoch in the political and economic organisation of Nigeria.[372] Unlike the previous 1960 and 1963 constitutions, the 1979 constitution provided that sovereignty belongs to the people of Nigeria from whom government through this Constitution derives all its powers and authority. The new constitution reinforced the Africanisation and 1972 Nigerian indigenization policies, which adopted a socialist model of resource ownership and welfare of the people becoming the primary target of the government. The Constitution Drafting Committee set up six sub-committees composed of important members from all sectors of the society working along 346 memoranda from the public. Perhaps the most interesting part of the Report is the Committee's debate on the question of how far the Constitution should expressly adopt an ideological preference and principles on which the State is organised and spell out the ideals and objectives of the social order.

The committee recommended that an open commitment to socialism should be included, as the only effective answer to the conditions of under-development, inequality and exploitation that exist in the country. This move reflected the regional African states' approach to counter the imperial power through broad and inclusive ideologies of African

[369] Imhonopi, D. and Iruonagbe, C.T., (2013). Colonialism, Social Structure and Class Formation: Implication for Develpoment in Nigeria.
[370] Onimode, B. (1978). 366
[371] Onuoha, G. (2018). Bringing 'Biafra' back in: Narrative, Identity, and the Politics of Non-reconciliation in Nigeria. *National Identities*, *20*(4), 379-399.
[372] Yakubu, J. A. (2000). Trends in Constitution-making in Nigeria. *Transnat'l L. & Contemp. Probs.*, *10*, 423.

socialism and Marxism as a common struggle and a way of achieving the collective empowerment of African peoples. African nationalists such as Kwame Nkrumah, Ahmed Sékou Touré, and Julius Nyerere— advocated for a distinctly African brand of socialism that fused indigenous African values and traditions with elements of the Marxist-Leninist ideology that will give prominence to the state of the economy in their quest for transformation. The committee's recommendation was reviewed to the effect that "The State shall, within the context of the ideals and objectives provided for in the Constitution, control and operate the major sectors of the economy while individual and group rights to operate the means of production distribution and exchange shall be protected by law.[373] The major sectors of the economy under the control of the government appear in chapter II of the fundamental objectives and directive principles of the state policy. The Committee differed crucially on National Objectives and Public Accountability and declared the constitution as a charter of government that involves relations and concepts that are not amenable to the test of justiciability or capable of enforcement in courts of law. Thus, no court should have jurisdiction to determine whether any executive action, law or judicial decision conforms to chapter II.

4.3. Sovereign Debt and the IFIs "Open Door" Lending Policies in Nigeria

The struggles for post-colonial economic independence led to the 1970s nationalisation of state enterprises and the seizure of foreign assets. The drastic policy shift represents the African stand for economic independence and resistance to colonial leftovers in economic relationships that were never freely entered but made under imperial rule. This radical economic and political shift by the newly independent states became a major concern to the ex-colonialist states which have held a different attitude towards the legality of nationalisation and expropriation of alien properties by the states.[374] The indigenisation policy came as part of the measures of attaining independence of foreign economic control by limiting foreign participation and encouraging local participation in economic affairs. The achievement of economic self-reliance forms one of the primary objectives of indigenisation, and the establishment of the Nigerian Enterprises Promotion Decrees 1972 was meant to

[373] Read, J. S. (1979). The New Constitution of Nigeria, 1979:"The Washington Model"?. *Journal of African Law*, *23*(2), 131-174.
[374] Malanczuk, P. (2002). 209

ensure the reduction of foreign control.[375] The power of property ownership was crucial in the early years of economic liberation in Nigeria before the Sap era came with a reversal of policy. The hitherto economic and political shift was, however, short-lived and by the 1980s, the nationalisation policies had run their course due to the heightened vulnerability to external pressures. During the 1980s oil crisis, the country entered a period of sharp economic decline. This decline was manifest in declines in output, export revenues and capital inflows, which added to the vulnerability to external pressures. To restore capital inflow and save their economy, the country had to have recourse to the International financial institutions for financial assistance in the name of sovereign debt.

At this time, the country had to accept the debt liability and conditionality popularly known as the structural adjustment programmes as a rigid economic policy that jettisoned the nationalisation policies and reduced the state's control over the economy. The policies introduced severely reduced the social wage and provision of services to the poor and stress the primacy within the policy of debt servicing. Following the introduction of Sap in the 1980s, an open-door policy was embarked upon which avails any foreign investor to own and participate in any enterprise in Nigeria provided it not the production of arms and drugs. The structural adjustment programmes, pursued by the Nigerian military government, brought changes of legislation to embrace these liberal provisions is designed to provide an incentive to the foreign investors but more important is to open the door for the Free-market world and the restoration of the economic governance to the pre-indigenisation years. The military government established the Nigerian Investment Promotion Commission, which offers a remarkable number of incentives and assurances to foreign investments, including guaranteeing the free flow of capital by easing restrictions in foreign exchange dealings. The effort to provide an incentive to foreign investments directly affected the internal economic participation through the rise of foreign economic powers shaping the economy. By liberalising the economy and decreasing government intervention in economic affairs, local participation and investments were nudged by the established foreign multilateral investment, sending very little hope of economic development and self-government for Nigerians.

By the end of the 1980s not only did it proved virtually impossible to obtain significant loans without such structural adjustment programmes, but the economic conditions, were an additional range of political “good governance” conditions. Borrowers

[375] Okonkwo, C. O, (2002) Improving Nigeria’s Investment Climate: Recent Developments. Macmillan, F. (Ed.). *International Corporate Law-Volume 2* (Vol. 2). Hart Publishing. Pp 187-191

were left in no doubt that the development of neoliberal economic free-market systems and administrative probity for "good governance" would be regarded as essential for loan eligibility. The impact of the economic policies of the SAPs on the African economic and political systems was dramatic. The financial lending policies and conditionality arguably reversed the gains of post-colonial "Africanisation" movements by replacing nationalisation laws with liberalisation. The involvement of the international financial institutions in projects of good governance in the post-colonial states has over the last decades become a major topic of discussion within individual states. The sovereign conditionality is seen to be inconsistent with the economic, social, political and historical realities of the post-colonial states. The individual states experience a varying degree of engagement with the IFIs but appear to share some fundamental features –of the imposition of common IFIs neoliberal economic structures.

4.3.1. The First Phase of the Structural Adjustment Program in Nigeria

Nigeria's indebtedness dates back to the pre-independence era, obtaining long-term loans on soft terms from multilateral and official sources such as the World Bank and Nigeria's major partners. However, the country's debt profile was relatively low until the 1980s due to the fall in oil prices, for the first time, the country incurred a loan in 1978 to the tune of US$1.0 billion from the international capital market.[376] Several years afterwards, the Nigerian total public external debt stock kept accumulating steadily only decrease momentarily. From 2012 to March 2019, the total public debt rose from US$6,527.07 million to US$25,609.63 million.[377] Most of the loans are owed mainly to international financial institutions such as the World Bank, IMF, and the Africa Development Bank, as well as bilateral agencies such as the China Exim Bank.[378] As the country's debt piled up, the severity of indebtedness leads to increased technical and economic conditionality imposed by international financial institutions.[379] These conditions are typically free-market economic policies introduced under the Structural Adjustment Programme (SAP) policies by

[376] Essien, S.N., Agboegbulem, N., Mba, M.K. and Onumonu, O.G. (2016). An Empirical Analysis of the Macroeconomic Impact of Public Debt in Nigeria. *CBN Journal of Applied Statistics*, *7*(1), pp.125-145.

[377] Total Public Debts. Available at: https://www.dmo.gov.ng/debt-profile/total-public-debt?filter%5Bsearch%5D=&limit=50 (last accessed on 4th sept 2019)

[378] Essien, S.N., Agboegbulem, N., Mba, M.K. and Onumonu, O.G. (2016). 376

[379] Igbuzor, O. (2003). 'Privatization in Nigeria: Critical Issues of Concern to Civil Society'. *A Paper Presented at A Power Mapping Roundtable Discussion on the Privatisation Programme in Nigeria Organised by Socio-economic Rights Initiative (SERI) Held at Nigeria Links Hotel Abuja on 3rd September*.

Institutions[380] Among the policies, formally introduced in 1985 by the Babangida military regime[381] include the Privatization and Commercialisation set up to pursue deregulation and privatization, removal of subsidies, reduction in wage bills and the retrenchment of the public sector.[382]

By the 1970s and the early 1980s, Nigeria witnessed a dramatic expansion in oil production and revenues. The economic expansion, however, soon faded and the initial prosperity ended by the middle of the 1980s in a severe economic crisis due to economic recessions caused by the global oil price shock. The administration made several efforts to salvage the crumbling economy by establishing the Economic Stabilization (Temporary Provision) Act of 1982, giving legal backing to the government resolve to reduce expenditure and curtail imports. Despite the several measures put in place, the economic situation in the country failed to improve. For this reason, the government decided to approach the IMF for a balance-of-payment support loan. The approach to the IMF was partly due to the international commercial bank's reluctance to make credit accessible to Nigeria without the IMF "seal of approval" which represents a vote of confidence for the country. [383] The loan application made to the IMF was, however, scrupled by the succeeding regime when it rejected the conditions to devalue the national currency, deregulate, and withdraw subsidies, especially on petroleum products, liberalize trade and privatize state-owned enterprises. The Babangida regime, however, settled with the IMF on loan. This event marked a turning point in the economic policy in Nigeria. Throughout the rest of the 1980s, 90s and 2000s, **t**he public discourse came to be dominated by debate concerning the structural adjustment programme, debt negotiations, the IMF, the World Bank and Nigeria's external creditors.[384]

In a national debate organised by the military regime regarding the government's proposal for financial credit from the IMF, the outcome of the debates conveyed a clear and unequivocal public opposition and rejection of the IMF and World Bank conditionality. The regime publicly repudiating the IMF and declared that Nigeria would, instead, opt for a 'homegrown solution to her economic difficulties' a move which many Nigerians welcomed and saw as goodwill and effort to elicit the input of citizens in developing national economic policy. However, in less than a month, the government unveiled an economic package

[380] Biersteker, T. J. (1993). 313. P78
[381] *Ibid*
[382] Zayyad, H. R. (1996). 'Privatization and Commercialisation in Nigeria. *Privatization in Africa: The Way Forward, Dr. Olu Fadahunsi, Ed.(Nairobi, Kenya: AAPM)*.
[383] Agajelu, A. C., Obiakor, N. J., & Nnoli, L. O. (2016). A History of the IMF-Nigeria Relations since the 1970s.
[384] *Ibid.*

including the deregulation of the exchange rate, higher agricultural prices, financial liberalization and partial privatization. Although the package was presented as 'homegrown', it was criticised mainly and challenged as bringing through the back door the negotiated conditionality with IMF officials the World Bank.[385] Having finally introduced the SAP programs despite the public outrage, the Babangida regime began the reform processes and implementation of the financial lending policies. The regime pursued the SAP ardently, with rapid and dramatic consequences for the Nigerian political economy and social cohesion. The SAP introduced by the Babangida regime was a package of neoliberal economic reforms primarily aimed at strengthening market forces and "rolling back the state".[386] The Structural Adjustment Programme set out to address the deteriorating economic and socio-political conditions and had the following key objectives: to reduce the preponderance of unproductive investments in the public sector; to achieve a viable balance of payment; to reduce dependence on oil and imports by restructuring and diversifying the productive base of the economy.

For the country to achieve the said objectives of addressing the deteriorating economy, the IMF prescribed policies including the adoption of appropriate pricing policies in all sectors with greater reliance on market forces; restructuring and rationalization of the public sector through privatization, commercialization, and removal of subsidies; trade liberalization; adoption of a realistic exchange rate was pursued.[387] The introduction of the structural adjustment programme marked the beginning of the debt crisis history in Nigeria. In coming years, the country continued to be pressed down by a heavy external debt burden that rose from $19.5 billion in 1985 to around $30 billion by the end of 1994. Moreover, the SAP resulted in an acute economic hardship for the majority of the Nigerian people, with GNP per capita falling from $1,160 in 1980 to $300 in 1993.[388] The growing number of debt and its eventual accumulation entangled the country into a difficult situation between the need to fulfil the IFIs thick layer of conditions on the one hand and the strong domestic resistance on the other. As suggested by Lumina Cephas, a severe indebtedness often renders debtor countries subject to the massive amount of control of IFIs and other creditors, thereby

[385] Ibhawoh, B., & Akinosho, L. (2017). Autocrats and Activists: Human Rights, Democracy and the Neoliberal Paradox in Nigeria. In *Africa under Neoliberalism* (pp. 136-150). Routledge.
[386] Jega, A. (Ed.). (2000). *15*
[387] Nwagbara, E. N. (2011). The Story of Structural Adjustment Programme in Nigeria from the Perspective of the Organized Labour. *Australian Journal of Business and Management Research*, *1*(7), 30-41.
[388] Jega, A. (Ed.). (2000). *15*

eroding the ability of these countries to freely determine and pursue policies favourable to their development in line with their aspirations.[389]

The aggregate debt load on the country resulted in massive IFIs conditionality starting from the late 1980s with several austerity measures, and other imposed set of economic policies as the lending terms and conditions.[390] Urban dwellers, especially public sector employees, were hard hit by the austerity measure, which became the archetype of SAP. The deplorable situation was exacerbated by the introduction of other reforms contained in the SAP such as the retrenchment of workers; rising high cost of living and removal of subsidies, among others. These reforms led to the decline of the real incomes of civil servants (who are mostly urban dwellers) by almost 50 per cent.[391] The suppressive and undemocratic means by which the state pursued SAP alienated many Nigerians and pushed them towards questioning, not only the efficacy but also the legitimacy of the state.

4.3.1.1. The Role of Civil Society in the implementation of SAP in the Military Regime

Throughout the SAP era in the 1980s and 90s, **t**he public discourse came to be dominated by debate concerning the implementation of the structural adjustment programme. . Labour unions constitute a formidable opponent to the Nigerian government because of neo-liberal policies. Antagonism became the mark of labour unions' relations with the Nigerian government especially regarding the implementation of SAP neo-liberal policies. The labour union and civil society's antagonism appeared to be simultaneously directed against both external and internal actors who championed the implementation of the programme.[392] Several associations and unions structured into 29 industrial unions under the Nigeria Labour Congress (NLC) expressed their opposition to the controversial loan sought from the International Monetary Fund (IMF) at the inception of SAP in 1983 by the Nigerian government. Several civil societies and professional organizations such as NANS, the Nigerian Medical Association and the Nigeria Bar Association (NBA) came together to form a coalition known as the National Consultative Forum (NCF). The goal of NCF was to

[389] Debt Management Office Nigeria, External Debt Stock document. https://www.dmo.gov.ng/debt-profile/external-debts/external-debt-stock (last accessed on 8th Oct 2017)
[390] Igbuzor, O. (2003). 379
[391] Nwagbara, E. N. (2011). 387
[392] Tar, U. A. (2008). *The politics of Neoliberal Democracy in Africa: State and Civil Society in Nigeria*. Bloomsbury Publishing.

provide a united forum for mass organizations, professionals and individuals to promote the idea of a National Conference that would offer solutions to social, economic and political difficulties confronted by the country'.[393] The conference was dispelled and NCF leaders arrested by the government. Following the aborted National Conference organized by the NCF, the forum transitioned into an organized civil society organization, the Campaign for Democracy (CD) in 1991.[394]

The Campaign for Democracy was a coalition of several affiliate organizations, including the Committee for the Defence of Human Rights (CDHR), Civil Liberties Organization (CLO), the NANS, NCF, Nigerian Medical Association (NMA, Lagos Branch), Constitutional Rights Projects (CRP), Women in Nigeria, (WIN), the Nigerian Union of Journalists (NUJ) and the Movement for the Survival of Ogoni People (MOSOP). The primary goal of these organizations was their commitment to restoring democratic rule and the termination of SAP and other neoliberal economic policies that had caused the people hardships. Despite the growing campaign against the SAP, compounded by threats of strikes and boycotts from the Nigeria Labour Congress (NLC) and other civil society organizations, the regime intensified an aggressive match to the adjustment policy. To the chagrin of the civil society, the regime incorporated the most contested elements of structural adjustment into its 1986 budget – the withdrawal of subsidies, devaluation of the Naira, massive cut in public sector expenditure, the withdrawal of the state's quotas in public enterprises, retrenchment of public sector workers – all as a means of down-sizing the over-burdened state.[395] The implementation of these programs involved significant use of state repression against civil society during the programme.[396] The powers of the State Security Service, SSS were generously extended to enable it arbitrarily to detain, torture and interrogate dissenting group leaders and members. The extended powers of the SSS also allowed it to form secret groups, as a counter-strike measure, to crack and undermine industrial actions, intimidate students and workers and harass social critics (the most vocal critics of the regime namely Gani Fawehinmi, severally arrested and detained).

Throughout the years of SAP in the military regime, it remained a difficult contest between the government and civil society organisations. Civil society organizations and labour groups, notably ASUU, organise strikes against the Nigerian government in attempts

[393] Ibhawoh, B., & Akinosho, L. (2017). 385
[394] Ibid
[395] Akinwale, A. A. (2014). Labour Unions' Struggle with Neo-liberal Policies in Nigeria.
[396] Tar, U. A. (2008) 392

to resist the adverse consequences of neo-liberal policies on the social and economic realms, particularly in the university system.[397] However, the military regime stood firm and resolute in its desire to accommodate the lending policies despite the public disdain and mass disapproval of the economic policies imposed by the Financial Institutions. The country came under a more distressing economic crisis, manifested in declining revenues and a general decline in the production of goods and services. The retrenchment of state from most of the social and economic sectors keeping in line with the SAP has contributed to the intensification of the issues. The Structural Adjustment Programmes embarked on revitalising the growth and halting the economic stagnation negatively affected society and correlated with the disruptive social organisation.[398]

4.3.2. The Second Phase of Sovereign Debt Relation in Nigeria

The handling of the economy by the military regime in Nigeria caused many difficulties and generally stifled the inclusive national participatory rights. By all means, the return to civilian administration in 1999 represents an excellent opportunity to inspire a renewed hope for democracy and representative governance. The new civilian administration, formed in 1999, came in with a plan for several far-reaching economic reforms in the country. On assumption of office in May 1999, President Obasanjo initiated various efforts to secure debt relief for Nigeria's debt burden that became a significant problem since the early 1990s. The administration embarked on a global campaign for debt relief for Nigeria, and despite the early resistance from the creditors, the president's efforts paid up. Spain was one of the first countries to cancel Nigeria's debt when in July 2000 it cancelled the $100 million debt. The campaigns ultimately led to the granting of the second-biggest debt relief of US$18 billion from the Paris Club in June 2005.[399] Although the economy responded positively to some of the reforms with an average growth rate of about 6 per cent from 2003 to 2007, however, the economic progress shrouded the deteriorating living conditions of the people in which basic social welfare services and economic infrastructure remained poor and neglected. Nevertheless, the granting of these massive debt reliefs came with equal demands for economic reforms as the lending terms and conditionality. Many criticised the conditionality

[397] Akinwale, A. A. (2014). 395
[398] Osaghae, E. E. (1995). *Structural Adjustment and Ethnicity in Nigeria* (No. 98). Nordic Africa Institute.
[399] Alli, W. (2010). Nigeria's Foreign Policy of Democratic Transition and Economic Reforms. In *Governance and Politics in Post-military Nigeria* (pp. 145-172). Palgrave Macmillan, New York.

as a pretext to drag the country into perpetual dependency. On the side of the IFIs, the common justification for its conditionality is to safeguard its resources and ensure the borrowing state pursue policies consistent with its objectives to bring about sufficient improvements in the country's balance of payments and other macroeconomic variables.[400] The IFIs also firmly maintained that its conditionality does not affect country ownership.

The new civilian regime outlined its economic policy objective of improved external cooperation and more integration of the country into the global economic structure. In other words, the same 1986 neoliberal economic policies as pursued by the military regime were repackaged in the civilian regime that focused on those reforms contained the structural adjustment programs of the IMF and other financial creditors. By 2005, the country had $18 billion Paris Club debt relief, subject to the implementation of IFIs economic reforms.[401] The reforms, which the government campaigned through Okonjo-Iweala (the coordinating minister of finance), was defended by the government as necessary to prevent macroeconomic distortions but received huge public resentment.[402] The relief, which ostensibly targeted to address the crisis and promote efficient fiscal planning, however, failed in its mission as the National Bureau of Statistics (NBS) data indicated consistent debt accumulated over $15billion in foreign debt as of June 30th, 2017. In other words, even with the debt relief in 2005, where the Nigerian government paid $12.4bn to the Paris Club as the basis to write off $18bn of the country's total external debt of $30bn, the country was engrossed in perpetual borrowing. On the one hand, the cut in government spending as part of the economic reform fuelled battles between the government officials and the National Assembly[403] is given the channels followed by the economic team in reaching a deal with the financial creditors.[404] The adjustment reforms that ensued made the country became more amenable to the manipulations of the financial institutions.

[400] Lumina, C. (2013). Sovereign Debt and Human Rights. *Office of the High Commissioner for Human Rights, Realizing the Right to Development: Cooperation for the Right to Development (Geneva: United Nations, 2013)*, 289-301.
[401] Callaghy, T. M. (2009). Anatomy of a 2005 Debt Deal: Nigeria and the Paris Club. Available on: https://www.sas.upenn.edu/polisci/sites/www.sas.upenn.edu.polisci/files/TC_Nigeria_long.pdf (last accessed on 8th Oct 2017)
[402] *Ibid*
[403] *Ibid*
[404] Seteolu, D., & Aje, O. (2018). Nigeria's External Debt: Is the Country Receding into a New Debt Trap?. *Acta Universitatis Danubius: Oeconomica*, *14*(7).

4.4. Chinese Loan and the New Sovereign Debt Regime in Nigeria

In less than a decade, China has become the single most important lender to African countries. China is now the largest bilateral official creditor of many countries. The Chinese involvement in a lending relationship with African states has created a different new challenge to scholars and commentators for the yet little established practice and clarity of the terms of the loans. In 2006, China published its first White Paper on African policy that disclosed China's ambition to play a more significant role in Africa, with influence based on its great volume of foreign aid to African countries and extensive trade and investment activities.[405] The White Paper on African Policy affirms the Chinese interest as not neo-colonial in its relations with Africa. According to the document, as issued by the Ministry of Foreign Affairs of the People's Republic of China, "sincerity, equality and mutual benefit, solidarity and common development are the principles guiding China-Africa exchange and cooperation and the driving force to lasting China-Africa relations." It added that; China respects African countries' independent choice of the road of development and supports African countries' efforts to grow stronger through unity. "Unlike financial assistance from many international financial institutions, the Chinese lending relation is a profit-driven policy which has few or no attached conditions. It does not attempt to bring social changes or impose its political norms on African states.[406] Despite the Chinese claim that their financial credit does not involve conditionality, however, academics and civil society organisations worry about China's appetite for African resources.

In October 2000, Nigeria took part in the China-Africa summit on debt relief with the sight of increased cooperation in economic and social development. The Nigeria-China economic relation was also enhanced with the establishment in March 2001 of the Nigeria-China Joint Commission on Trade and Economic and Technical Cooperation. The successive bilateral cooperation resulted in China cancelling Nigeria's debt in 2001 alongside other African countries' debts worth $1.2 billion. This gave rise to more trade relations and Chinese investments in Nigeria. The volume of trade rose from less than $200 million in 1999 to $1.85 billion in 2003 and almost $3 billion at the end of 2006. The first Chinese loan to Nigeria was agreed on on March 27, 2002, as follows: $114.89 million each for constructing two 335 MW gas power plants, namely Omotosho and Papalanto (Olorunshogo)

[405] Wu, C. H. (2012). Beyond European Conditionality and Chinese Non-interference: Articulating EU–China–Africa trilateral relations. In *China, the European Union and Global Governance*. Edward Elgar Publishing.

[406] Chen, Y. (2015). China's Investment and Trade in Africa: Neo-Colonialism or Mutual Benefit. *Cardozo J. Int'l & Comp. L.*, *24*, 511

in Ondo and the Ogun States, respectively. The loan was obtained at a six per cent interest rate, and it covered 65 per cent of the costs of the project, while Nigeria then covered the 35 per cent balance. In July the same year, two other loans totalling $159.83 million for rural telephony were obtained at a 3.5 per cent interest rate. As it stands, the records from Nigeria's Debt Management Office (DMO) revealed that China is Nigeria's major creditor with $2.3 billion out of $3.3 billion under the Nigerian bilateral sovereign debts. The EXIM Bank of China is Nigeria's biggest bilateral creditor in nearly two decades, having lent the country about $6.5 billion (N1.9 trillion) since 2002.

Nigeria has obtained 17 Chinese loans to fund different capital projects, the repayment which would spread to around 2038. Some of the projects financed by the loan include six projects in the transportation and ICT sectors each financed by loans from the Chinese bank, while energy, agriculture and water sectors, respectively, have three and two projects tied to Chinese loans. The Chinese authority took advantage of the neoliberal policies already in place, such as privatisation, to obtain concessions and license in vital economic sectors, including mining and oil explorations. The China National Overseas Oil Corporation won a 45 per cent stake in Oil Prospecting Licence 246 (OPL 246) at the cost of $2.3 billion, in Nigeria's Deepwater oil field previously operated by Total. Another Chinese company also bought a controlling share in the Kaduna refinery and agreed to invest $300 million in the establishment of a new liquefied natural gas plant. In general, the lending relationship stimulated economic cooperation between Nigeria and China, which progressed at a rate higher than expected, putting a lot of pressure on the Nigerian government's ability to meet the challenges this development presents in practical terms.[407]

4.5. Impacts of IFIs Lending Conditionality on Socio-economic Structure in Nigeria

4.5.1. Privatization and Commercialization

The earliest sets of conditionality to be formally launched in Nigeria as part of the IFIs lending conditionality include the transfer of ownership of the means of production from the public to private.[408] Privatization was defined by the act, as the relinquishment of part or all of the equity and other interests held by the federal government or any of its agencies in enterprises whether wholly or partly owned by the federal government. The transfer of state

[407] *Ibid*
[408] *Ibid*

enterprises into a market-oriented economy has been among the most contested issues between the IFIs and the less developed countries. The transfer of control of state-owned enterprises to foreign investors, the IFIs privatisation policy in Nigeria contradicted the hitherto indigenisation policy and the principle of permanent sovereignty over resources. The key objective of the program is opening up the nation's economy to global market forces and limiting the role of government in the economy. The first chapter of the privatization program in Nigeria ran from 1988 to 1993. The military regime enacted the Privatization and Commercialization Decree of 1988 as part of the major paradigm shift from public enterprises to private in Nigeria agreed with the IFIs.[409] The decree provided the legal backing for the program despite receiving significant public discontent and a massive strike by labour congress, student organizations and other stakeholders.[410] The Privatization and Commercialisation Decree of 1988 set up the Technical Committee on Privatization and Commercialisation (TCPC) under the leadership of Dr Hamza Zayyad, with its main objectives to pursue privatization, leading to the removal of subsidies, reduction in wage bills and the retrenchment of the public sector.[411]

The second round of privatisation started with the creation of the Bureau for Public Enterprises Act of 1993 that repealed the 1988 Act and set up the Bureau for Public Enterprises (BPE). By 1999, the Government enacted the Public Enterprise (Privatization and Commercialization) Act.[412] Some of the vital sectors partially privatised include the following. Telecommunications Sector, electricity sector, petroleum sector, steel and aluminium sector, mining and solid minerals sector, media and insurance companies, transport and aviation companies among others. The fully privatised sectors include; commercial and merchant banks, cement companies, agro-allied and a lot other miscellaneous. The supporters of the privatisation of the public enterprises criticised the lack of efficient delivery of services and poor management as the main reason justifying the policy. However, while efficiency levels were expected to be high, the privatisation of enterprises such as the National Electric Power Authority (NEPA) and the Nigerian National Petroleum Corporation (NNPC) hardly showed any significant improvement in their operational and economic performance. Moreover, what has been the major issue is that privatisation deprives people of the chance to come together to decide what kind of society

[409] *Ibid*
[410] Biersteker T. 313
[411] Zayyad, H. R. (1996). 382
[412] Igbuzor, O. (2003). 379

they want to live in and how the economy should be run. The Privatization, like many other reforms imposed through the IMF/World Bank economic lending conditionality, has created a fragmented system where decision-making in critical sectors of the economy becomes difficult. It breeds lacked transparency and often favoured segment of the society, especially the well connected, to exclusively control the economy, therefore creating class and social inequalities and differentiation in the country.[413]

The privatised sectors that most affected the economy and created class and social inequalities included the banking sector where the consolidation exercise took place within a short deadline leading to the folding up and merger of the country's 89 banks into 25, each with a minimum capital of N25 billion.[414] The consolidation and concentration of the banking sector disenfranchised wide grassroots and household-to-household with connection to several commercial banks and people's banks while opening the door for foreign financial and strategic interests.[415] The privatisation of the banking sector and liberalisation of other vital sectors also led to the massive influx and takeover of crucial economic and social policy space by foreign organisations.[416] Several foreign agencies and foundations, such as USAID, the Ford Foundation, the MacArthur Foundation, and the Friedrich Naumann Foundation, became increasingly active in the country, supporting several courses, including development projects and government programs. For example, the FBI opened an office in Nigeria in 1999 to work with Nigerian agencies on money laundering and financial crimes.[417] This new role and arrangement have been argued to solidify the dominance of foreign institutions in a vertical and an unequal relationship with decision-making space in the country. The increased dependency syndrome in Nigeria is well evident in the area of import substitution.

After almost three decades of economic reforms of privatisation and liberalisation, the harsh social consequences of the economic reform in the new structure of ownership of privatized public enterprises engendered widespread poverty and different form of resistance. The transfer of state resources to shareholders in multilateral corporations has been one of the major causes of ownership and control crises. The exploitative activities of giant multilateral corporations in Nigeria such as Shell, the Anglo-Dutch global oil giant that produces slightly

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[413] Adejumobi, S. (2010). Democracy and Governance in Nigeria: Between Consolidation and Reversal. In *Governance and Politics in Post-Military Nigeria* (pp. 1-21). Palgrave Macmillan, New York. P14

[414] Usman, Y,B. On the Economy. p158

[415] *Ibid*

[416] Agajelu, A. C., Obiakor, N. J., & Nnoli, L. O. (2016). 383

[417] Alli, W. (2010). Nigeria's Foreign Policy of Democratic Transition and Economic Reforms. In *Governance and Politics in Post-military Nigeria* (pp. 145-172). Palgrave Macmillan, New York.

over half of Nigeria's oil have spawned alienation, protests and resistance across the local communities of the Niger Delta region.[418] The struggle of the Movement for the Survival of Ogoni People (MOSOP), the Movement for the Actualization of the Sovereign State of Biafra (MASSOB) were essentially driven by the quest for self-determination, to wrestle their ecology from Shell and force the Nigerian state to accept their right to control their land and the proceeds therefrom. The mounting pressure by the organised labour expressed the level of public rejection of the economic lending conditions. A breakdown of the number of strikes showed that there was an upsurge in the number of strikes in the military era. In both periods, trade unions have increasingly embarked upon strike action. From 1960-68, Cohen recorded a total number of 706 strikes involving workers.[419]

4.5.2. Trade Liberalization

At independence, the Nigerian economy was largely agrarian with a very narrow industrial base being backed by a national development plan regarded as a means of expanding the national industrial base. As part of the national development plan, an intensive export of cash crops was embarked upon to finance imports and expansion of the industrial base. Marketing boards were established to source for external markets for the export of cash crops of cocoa, cassava, ginger, rubber, groundnuts, etc. In addition, exchange control measures were implemented as well as import tariffs and licensing to actualise the industrialization policy and import prohibition. A second national development plan was unveiled in 1970–4 and presented as an economic plan that will give the country more control over its destiny through protectionist policies. This plan comprises measures to restore the public assets destroyed during the civil war and also to enhance the internal productive capacity and ensure equitable distribution of gains of development across the country.[420] Another economic plan, the third National Development Plan 1975–80, was launched in the middle of the oil boom with an ambitious project of enhanced Agriculture, Industry, rural development and state social programmes. The third national economic plan also entails similar trade policies to the second national economic plan. In the fourth National Development Plan 1981–5 however, as Nigeria was experiencing a decline in foreign

[418] Obi, C. I. (1997). Globalisation and Local Resistance: The Case of the Ogoni versus Shell. *New Political Economy*, *2*(1), 137-148.
[419] Nwagbara, E.N. (2011). 387
[420] Feridun, M., Ayadi, F. S., & Balouga, J. (2006). Impact of trade Liberalization on the Environment in Developing Countries: the Case of Nigeria. *Journal of Developing Societies*, *22*(1), 39-56.

exchange earnings due to the oil shock, the external reserves fell, and the Balance of Payment worsened. This led to stricter trade restrictions introduced. Midway into the execution of the National Development Plan, SAP was introduced, which resulted in a policy shift where the government was a force to repeal all the protectionist and indigenisation policies in favour of a liberalised investment regime.[421]

The SAP was a watershed in the history of trade and investment policy reforms in the country. Among the conditionality in the structural adjustment program is the removal of trade barriers and capital movement, as a necessary condition for poverty reduction, increased mobility of capital increased ease of movement of goods and services across national borders as well as the spread of democracy and human rights.[422] The Financial Institutions envisaged this easy movement of capital as a strategy to place the economies of the less developed countries on the path part of sustainable development. Following the implementation of the SAP liberalisation policy, the import and export licenses were abolished, exports were encouraged. Domiciliary accounts for exporters were encouraged. The revised duty drawback/suspension scheme was introduced. The Export Incentive and Miscellaneous Provisions Decree of 1986, the Nigerian Export Credit Guarantee and the Insurance Corporation of 1988 were also introduced.[423] Consistent with the SAP agreement with the World Bank and the IMF, the government amended the indigenisation policy to allow multilateral companies to invest in any activity in Nigeria, including food production.

4.5.3. Subsidy Removal and Social Welfare Retrenchment

The Nigerian state is designed to be an interventionist social welfare state with subsidies as the bedrock of the agrarian policies as provided in chapter two of the constitution of Nigeria. The common interventionist measures employed by the government usually includes the petroleum sector, educational, and agricultural sectors to cushion the high cost of products.[424] With the introduction of the IFIs lending conditionality in the SAP, most subsidies and interventionist mechanisms were reduced and abolished. The withdrawal of subsidy was a major policy thrust of the Structural Adjustment Programme, which seeks to

[421] *Ogunkola, E. O., Bankole, A. S., & Adewuyi, A. O. (2006). An Evaluation of the Impact of Nigeria's Trade and Investment Policy Reforms. African Journal of Economic Policy, 13(1).*
[422] Feridun, M., Ayadi, F. S., & Balouga, J. (2006). 420
[423] *Ibid*
[424] Agajelu, A. C., Obiakor, N. J., & Nnoli, L. O. (2016). 383

leave the government with more money to meet other needs.[425] According to the IFIs because of the massive amounts of money going to the subsidy, the governments of the less developed countries often become handicapped to implement development projects that will ensure economic development and the payment of debts. Thus, the IFIs sees Subsidy as social welfare packages that have no much economic development value in the short-run and part of the reason for the debt crisis was massive government spending on subsidy.[426] IMF and the World Bank proposed for the removal of subsidy to foster self-sustained economic growth and to correct the balance of payments deficits as well as ensure the government would be able to pay back the IMF/World Bank loans.[427] Usually, the subsidy reforms in Nigeria come at a time when the atmosphere of the country gets tense due to the economic hardship that hit most families.[428]

The subsidy removal and shift in socio-economic policy direction as a corrective measure recommended by the IFIs have had multiple riffle effects. The social welfare retrenchment and absence of social programs contributed to the general decline in the quality of life and well-being of the citizens. The retrenchments were implemented through various reforms such as subsidy removal on fuel, which directly led to the increment in the pump price of the commodity, causing runaway inflation and unfavourable living conditions in Nigeria.[429] Reacting to the new reform, organized labour groups and concern citizens rejected the SAPs through strikes, public rallies and demonstrations.[430] The various campaigns against the SAPs rejected the retrenchment program for the adverse effects of such measures on their well-being. In addition to the subsidy removal, the Second Tier Foreign Exchange Market (SFEM) was set up by decree 23 in 1986 as part of the SAPs reforms. The SFEM devalued the Nigerian Naira, which significantly reduced the purchasing power both in the domestic and foreign market became impaired. With the highly undervalued Naira and the severe economic crisis, the quality of life of most Nigerians worsened.[431] The non-interventionist reforms contributed to the swift decline in the ability of the Nigerian state to provide for the basic socio-economic needs of the people.[432] This further contributed to the deplorable living

[425] *Ibid*
[426] *Ibid*
[427] *Ibid*
[428] Nwagbara, E.N., (2011). 387
[429] *Ibid*
[430] Agajelu, A. C., Obiakor, N. J., & Nnoli, L. O. (2016). 383
[431] *Ibid*
[432] Jega, A. (Ed.). (2000). *15*

conditions and economic marginalisation of many Nigerians, especially the poor, who were the most vulnerable group.[433]

The impoverishment and marginalisation of the population from the management of their natural wealth has led to an increasing internal crisis adding to the political instability of the state. Under the unstable economic and political conditions, groups have tended to rely on identity-based politics to stake a claim on state affairs or to protest exclusion and oppression, as well as to demand basic rights and socioeconomic provisioning. Several decades after the war, the Movement for the Actualization of the Sovereign State of Biafra (MASSOB) was established on 13 September 1999 evidencing the struggle is still alive. In the same way, other groups such as the Movement for the Emancipation of the Niger Delta (MEND) and the Movement for the Survival of the Ogoni People (MOSOP) emerged which claim to represent various marginalised group agitating for their right to self-determination in contemporary Nigeria. The rallying cry for most of these group's agitations for self-determination in Nigeria, of which there are many views, seemed to be broadly classified into economic marginalisation and imbalances in the political power structure of the nation.[434] The economic condition and lack of participation in economic affairs have always taken centre stage in these movements. The main agitation point in discussions of national importance includes a reference to issues of 'fiscal federalism', 'derivation formula', revenue sharing, etc. The allocation of revenue to the region or state was a major in Nigeria. The Nigerian constitution vested the ownership of all mineral resources in the federal government, and further makes provision for revenue allocation, particularly in those states from which the resources are exploited. Over the years, there has been a deep sense of alienation and dissatisfaction felt by many Nigerians pushing groups to the threshold of demanding self-determination.

4.6. Agitations for Economic Autonomy in Post-independent Nigeria

By the early 2000s, the Nigeria government gave in to the agitations and demands from civil society organisations and various ethnic nationalities, to convene a Sovereign National Conference in February-July 2005.[435] The conference aimed to address the growing

[433] Agajelu, A. C., Obiakor, N. J., & Nnoli, L. O. (2016). 383
[434] Lugard, S. B., Zechariah, M., & Ngufuwan, T. M. (2015). Self-Determination as a Right of the Marginalized In Nigeria: A Mirage or Reality?
[435] *Ibid*

movement and demands for self-determination by various groups, claiming of being dominated and marginalised in the affairs of the state. The critical issues set for deliberations in the conference were the national restructuring and devolution of powers, fiscal federalism, resource control, the internal form of government, accountability in governance, foreign policy and the economy. The Sovereign National Conference ended without a clear outcome as per the outlined agenda of the Conference. This outcome triggered a response from notable groups and personalities under the aegis of Pro-Sovereign National Conference (PRONACO) to reject the chaotic outcome of the Conference and called for a genuine discussion about the issues revolving around internal self-government and self-determination. Following years of the relentless call for another sovereign national conference, the federal government once again organised a second sovereign national conference in 2014 with similar themes. The conference's term of reference included issues of devolution of powers, fiscal federalism, an inclusive government, electoral system reform and tackling socioeconomic challenges, among others.[436] Despite holding the two national conferences, however, the agitations for the matters of economic self-determination, which include the issues of fiscal federalism, economic disparity and control over natural resources, remain ever-growing.

Often characterised as a complex multicultural state in which major socio-political issues are contested along the lines of tribal, religious, and regional divisions, the Nigerian state remains perennially unstable, with secession, civil war and minority agitations, seen as the common threats in the country.[437] These conflicts have become more pervasive and intense in the post-colonial period, and breakup continues to be contemplated by aggrieved segments of society as one of the possible ways of resolving the National Question. However, contrary to the overly simplistic analyses of the ethnic diversity in the country, empirical evidence largely shows that the conflicts are not necessarily dependent on the degree of diversity in the national ethnic and religious demography. Higher or least degree of ethnic or religious diversity does not always determine civil conflict as less ethnically diverse nations like Somalia, Rwanda and Yemen proved. Instead, the conditions that favour insurgency include poverty and economic marginalisation, among others.[438] Moreover, the phenomenal rise of communal conflicts beginning from the 1990s can be partly attributed to the shrinking state resources and a number of state policies, interventions and omissions, including the

[436] *Ibid*
[437] Osaghae, E. E., & Suberu, R. T. (2005). *A History of Identities, Violence and Stability in Nigeria* (Vol. 6). Oxford: Centre for Research on Inequality, Human Security and Ethnicity, University of Oxford.
[438] Fearon, J. D., & Laitin, D. D. (2003). Ethnicity, Insurgency, and Civil War. *American Political Science Review*, 75-90.

neglect and abuse of police and security bodies. An examination of the economic policies revealed the exclusion of people from economic affairs generates different patterns of conflict leading to the agitations for the right to self-determination by different groups.

Studies on ethnic violence in Nigeria establish the causative link between the ethnic people or groups secessionist movements in Nigeria and the neoliberal policies imposed by the IFIs as lending conditionality, which characterise a new form of neo-colonial relationship.[439] The rise of globalisation and the associated shrinking of the social welfare state is seen as the leading factor shaping the struggle for economic self-determination and ethnic nationalism where people are more incline to ethnic affinity and their right to reclaim their economic freedom from internal and external domination in the post-independent Nigeria.[440] The real effect of the shrinking of the state role in domestic economic affairs resulted in ethnic nationalists looking to fill in the void of providing a form of self-governance and resource control. From this standpoint, the ethnic nationalist's struggles in Nigeria, like many other former colonial African territories, often have a legal basis in international law.[441] This claim, however, has its effect on the integrity of the political and social order if every group sharing ethnic background can claim a separate identity, and ultimately the question of the practical application of self-determination.[442] Therefore, peoples and groups agitations remain highly topical today, particularly in the rapidly developing globalised system characterised by economic marginalisation. The major challenge now is how to settle legitimate agitations with the right of economic self-determination without giving in to the divisive ethnic violence and territorial fragmentation.[443] This point leads to the issue of addressing the root cause of ethnic violence (and all its manifestation) in self-determination.[444]

The rise of groups and ethnic nationalist movements in post-colonial African states sparked an extensive debate on the application of self-determination, and the sorts of freedom states are desirable to have.[445] Ethnic nationalism has become a constitutive element of self-

[439] Hébié, M. (2015). Was There Something Missing in the Decolonization Process in Africa?: The Territorial Dimension. *Leiden Journal of International Law*, *28*(3), 529-556.
[440] MacCormick, N. (1990). Of Self-Determination and Other Things. *Bull. Austl. Soc. Leg. Phil.*, *15*, 1.
[441] Micu, G. (2014). Considerations on the Political and Juridical Concept of Self-Determination. Analele Universității Titu Maiorescu, (XIII), 132-147
[442] *Ibid*
[443] George, D. (2018). National Identity and National Self-determination. In *National Rights, International Obligations* (pp. 13-33). Routledge.
[444] Wolff, J. (2014).
[445] Whitehall, D. (2016). A Rival History of Self-Determination. *European Journal of International Law*, *27*(3), 719-743

determination in post-independent Africa, yet has been condemned both from within and outside African states as the liberal democratic principle become the mainstream political ideology in the contemporary global political order. There exist strong calls for the need to expunge the idea of ethnic nationalism in favour of the liberal political idea that promotes the ability of citizens as individuals to choose and pursue what they think valuable, not necessarily in line with a group or ethnic interests.[446] The liberals argued that there had been illustrative evils from Hitler to Mussolini, demonstrating how the pursuit of national liberation and national values can lead to xenophobic attack and denigration of those outside the national boundary, and even for many within it.[447] The strength of a state, as the liberals argued, lies in its refusal to privilege any ethnic or cultural chauvinism. However, even with the growing pressure and general opposition to the idea of ethnic nationalism, yet, it has been a growing fantasy and desire not only in Africa but in many parts of the world, including the far-right populist and other ethnocentric nationalists movements in Europe.[448] In Africa, the rising ethnic nationalism and separatist movements present a significant challenge to the states and their move towards integration into the global economic and political web characterised by a Free-market and trade system.

In addition to the practical challenge of application of self-determination in post-colonial Africa, Smith and Hodgkin dismissed territorial nationalism in Africa as inauthentic, lacking the ultimate common historical origin around which it took form.[449] Thus, according to this view, what exists in Nigeria is not nationalism but tribalism that lacks neither historical fact nor common background to which nationalists could refer.[450] For that reason, the post-independence struggle for self-determination and self-government is baseless and therefore untenable under international law.[451] This view highlights the difficulty of theorizing the principle of national self-determination.[452] However, African historians such as Coleman[453] sought to understand the quintessence of the post-independence group or ethnic agitations for nationalism as anti-imperialism and modern neoliberalism. It is a struggle against the historical experience of racial humiliation, economic exploitation, and

[446] MacCormick, N. (1990). 330
[447] *Ibid*
[448] *Ibid*
[449] Young, M. C. (2004). Revisiting Nationalism and Ethnicity in Africa. *UCLA: James S. Coleman African Studies Center*. available at: https://escholarship.org/uc/item/28h0r4sr (last accessed 2nd Sept 2019)
[450] Hodgkin, T. 1956. *Nationalism in Colonial Africa* London: Muller. p 142
[451] Young, M. C. (2004). 449
[452] Shivji, I. G. (1989). 103
[453] Coleman, J. S. (1954). Nationalism in Tropical Africa. *American Political Science Review*, *48*(2), 404-426.

domination.[454] One of the essential things to note is that nationalism can be traced to two contradictory conceptions, both as ideology and as a social movement.[455] For African nationalism, the quintessence was and his anti-imperialism.[456] The post-independent African nationalism was a struggle not only to reclaim history but also to assert the right of the people to make history.[457] In African history, nationalism has been a reaction to imperialist domination thus as long as neo-colonialism is in existence, nationalism continues.[458]

Although the confounding pattern of political ethnicity known as "tribalism" has been negatively viewed as divisive, however, the new pattern of ethnic consciousness is, in most cases, the renewed struggle against the effect of neo-colonialism on post-colonial African political, social, economic and development challenges. The general restructuring of the African states in the image of western liberal states brought back onto the historical agenda, the national question, and nationalism in the form of anti-imperialism.[459] Most of the movements might be ethnocentric, disparate and articulated in ways that are sometimes parochial or religious bigotry. However, the resurging nationalist movements had more profound significance – the freedom to make own decisions, against the multiple layers of economic and political subordination and the neoliberal assault on nationalism and the right to self-determination.[460] While the lack of common direction affects the struggles and the demand for genuine self-determination, yet the one thing that secessionist groups in Nigeria have in common is the demand for economic participation, economic justice and self-governance. Moreover, people across the country seem to accept and develop a feeling of national identity in symbols that fostered unity such as the national sports teams, national currency, flag and more importantly the shared history and narrative throughout the colonial and post-colonial era.

The current international financial lending system represents one of the common challenges of the post-independent political economy in Nigeria and Africa in general. The role of economic injustice has become central to the liberation movements in Nigeria, thus, making the economic affairs and policies in the land becomes the central demand of the

[454] Shivji, I.G., (2003). 102
[455] Mamdani, M. (1990). State and Civil Society in Contemporary Africa: Reconceptualising the Birth of State Nationalism and the Defeat of Popular Movements. *Africa Development/Afrique et Développement*, *15*(3/4), 47-70.
[456] Shivji, I. G. (2003). 102
[457] Mafeje, A. (1992). *In Search of an Alternative: A Collection of Essays on Revolutionary Theory and Politics*. Sapes Books. P.11-12
[458] Amilcar Cabral Unity and Struggle: Speeches and Writings (London: Heinemann, 1980), xxii, xxv
[459] Shivji, I. (1989). 103
[460] *Ibid*

people national self-determination. In other words, addressing the issue of the right to economic self-determination in Nigeria requires addressing the common problem of economic injustice and marginalisation that further denigrates the aspirations of peoples and races within the territory.[461] Liberation movements in the country presently set their sights on a principled rejection of IFIs neo-colonial regimes for economic independence and self-determination.[462] The discussion below presents the roles and impacts of the current international lending policies on the question of the right to self-determination in Nigeria. While the energies mobilized by the ethnic separatist movements appeared to be through group identity linked to tribal and religious metaphor,[463] however, this discussion traces the historical antecedents, which explains the role of the economic policies in triggering the identity crisis represented by tribal groups, which plays an intriguing role in contemporary Nigerian politics and self-determination generating key debates. It posed the question of whether groups are the basis for determining economic self-determination and self-governance.[464]

4.7. Economic Self-determination: Nigerian Law and International Treaty Obligation

The Preamble to the Constitution of the Federal Republic of Nigeria 1999, as amended, proclaims the collective resolve of the people of Nigeria 'to live in unity and harmony as one indivisible indissoluble Sovereign Nation under God…' Section 2(1) is provided in unequivocal terms that 'Nigeria is one indivisible and indissoluble sovereign state to be known by the name of the Federal Republic of Nigeria'.[465] All ethnic groups and peoples in Nigeria shall be united and bound by the constitution and laws of the state in exchange for the protection of their lives and property and their rights to participate in economic, political and religious affairs.[466] Thus, by the provision of the Constitution, the sovereign existence of the Nigerian state depends on the consent of the Nigerian people. Accordingly, state affairs and governance can only be legitimately exercised in accordance with the aspirations of the Nigerian people, failure of which can lead to a reconsideration of

[461] Shivji, I.G., (2003). 102
[462] *Erk, J. (2018). 97*
[463] *Ibid*
[464] Summers, J. J. (2005). 101
[465] The Constitution of Nigeria 1999
[466] Kalu, K. A. (2000). Constitutionalism in Nigeria. *The Nigerian Juridical Review*, *8*(1). P57

the grand public mandate.[467] In Chapter II, the constitution laid the fundamental objectives and principles governing economic and social policy aspirations of the state. These principles govern the foreign policy, whether in negotiating trade agreements or participating in international conventions, including I. Promotion and protection of the national interest. II. Promotion of African integration and support for African unity. III. Promotion of international cooperation for the consolidation of universal peace and mutual respect among all nations and elimination of discrimination in all its manifestations. iv. Respect for international law and treaty obligations as well as the seeking of the settlement of international disputes by negotiation, mediation, conciliation, arbitration and adjudication. V. Promotion of a just world economic order.

The fundamental objectives and principle of governance found in the constitution form the political and the economic essence of governance, and in general, the right to internal economic self-determination for the people. For the exercise of the right to self-determination, the constitution of Nigeria was built around social welfare and democratic principles, rejecting in unambiguous and unequivocal terms, any attempt to undermine its territorial integrity or campaign that results in secession. While emphasizing internal self-determination, the preamble of the Nigerian constitution affirmed the resolution of Nigerians to live as one indivisible, sovereign nation built around the principles of freedom, equality and justice, good governance and welfare of all persons that consolidates the unity of the people. In other words, the Nigerian Constitution was built around the principle of internal economic self-determination and political participation. This position reaffirmed the international commitment of the country as a party to many international instruments, including the UN Charter that provides for the right to self-determination as well as the Human rights covenants. The ratification and domestication of the international treaties also established the right to self-determination contained in the treaties, to the extent of its consistency with the right of self-determination recognised in the constitution. The Nigerian constitution recognised the right to external self-determination only in its anti-colonial meaning which established the sovereignty and independence of the country against external domination.

As contained in international treaties including article 20 of the African Charter; all peoples shall have the right to exist, they shall have the unquestionable and inalienable right

[467] Adejumobi, S. (Ed.). (2010). *Governance and Politics in Post-military Nigeria: Changes and Challenges*. Springer. Femi falana

to self-determination. They shall freely determine their political status and shall pursue their economic and social development, according to the policy they have freely chosen. Most importantly, paragraph (2) of Article 20 of the African Charter categorically provides that 'colonized or oppressed peoples shall have the right to free themselves from the bonds of domination by resorting to any means recognized by the international community with all its varied connotations. Generally, by the domestication of the African Charter, the provisions of the charter including those relating to self-determination, are enforceable in Nigeria to the effect that Nigerian citizens under colonial bondage or any kind of oppression can have a valid legal cause of action to enforce the right to self-determination in Nigerian courts. The provision of the charter, however, cannot override the constitution of Nigeria. This explains the Nigerian Supreme Court decision in the case of Abacha v Fawehinmi. The position of the Supreme Court is that although the African Charter as domesticated has an international flavour, being the codification of an international treaty, its provisions do not override those of the Nigerian Constitution because the Charter is a Nigerian law only by the permissive provisions of section 12 of the Constitution itself. Nonetheless, it clear that the demand for right self-determination against foreign interference into the domestic affairs of the state is well entrenched in the constitution of Nigeria, which reaffirms its supremacy. Thus, the demands for economic self-determination, against IFIs economic policies, in this case, is tenable under the Nigerian law as most cases on self-determination in Nigeria or before the African human rights Commission are largely cases of economic marginalisation and domination by the multilateral corporations operating under the policies of the free-market system. ,

In one of the cases brought before the African Commission on Human and Peoples' Rights in 2001, the commission concluded consideration of communication under Article 55 of the African Charter on Human Rights and Peoples' Rights that dealt with alleged violations of human rights of the Ogoni people in Nigeria. The Ogoni people struggles feature contemporary economic rights and alleged severe human rights violations. In 1990, Ogoni people signed up for the 'Ogoni Bill of Rights', calling for internal autonomy and control of resources, as a solution to their economic marginalisation.[468] They pledged their wish to remain a part of the Federal Republic of Nigeria only subject to reasonable and adequate control of Ogoni economic resources as well as the right to protection against

[468] Olayode, K. (2010). Self-Determination, Ethno-Nationalism and Conflicts in Nigeria. *Department of International Relations, Obafemi Awolowo University, Ile-Ife*.

environment and ecology from further degradation.[469] In December 1992, the Ogoni sent its demands to SPDC, Chevron, and the NNPC, demanding them to pay compensation within thirty days or quit Ogoniland. The Ogoni people alleged that the Nigerian National Petroleum Company (NNPC), the State oil company, formed a joint venture with Shell Petroleum Development Corporation (SPDC) whose activities in the Ogoni region caused environmental devastation and human rights violations.[470] In another self-determination related case, in the Kevin Mgwanga Gunme v Cameroun case brought before the African Commission, the complainants alleged several forms of violations that demonstrate continued economic marginalisation and the denial of basic infrastructure. The government responded by presenting data that indicated the budget allocation to the people of Southern Cameroon. The Commission found that although the Respondent State violated various rights protected by the African Charter in respect of Southern Cameroonians, however, the people of Southern Cameroon cannot engage in secession, as secession is not recognised as a variant of the right to self-determination within the context of the African Charter. What if pertinent here is that, the African human rights commission recognised the claims of self-determination of the southern Cameroonians though it believes that the grievances can be addressed through comprehensive national dialogue.[471]

Similarly, in another case before the African Commission, the Cabinda case the complainants alleged, among other things, the Respondent State economically dominated the Cabinda people by denying them their status as a people and by extracting more than ninety percent (90%) of their economic patrimony while returning less than ten percent (10%) to Cabinda. By this act, the Complainant alleges, the Respondent State has perpetrated neo-colonialism and a violation of their right to economic self-determination.[472] The Commission held that in post-colonial Africa, the right to self-determination is attainable within the framework of an existing state and cannot entail secession insofar as groups are represented in decision-making institutions.[473] In this regard, the application of the right to self-determination demands that the government involve the people affected explicitly in decision-making processes and give special consideration to their concerns. The African

[469] *Ogoni Bill of Rights*

[470] Coomans, F. (2003). The Ogoni Case before the African Commission on Human and Peoples' Rights. *International & Comparative Law Quarterly*, *52*(3), 749-760.

[471] Mgwanga Gunme v. Cameroon, Comm. 266/2003, 26th ACHPR AAR Annex (Dec 2008 – May 2009)

[472] Flec V Angola (Communication No. 328/06) [2018] ACHPR 10; (5 November 2013). Available at: https://africanlii.org/judgment/african-commission-human-and-peoples-rights/2013/10

[473] Salomon, S. (2018). Self-determination in the Case Law of the African Commission: Lessons for Europe. *VRÜ Verfassung und Recht in Übersee*, *50*(3), 217-241.

Commission pointed out that "it is incumbent on State Parties, therefore, whenever faced with allegations of the nature contained in the present communication, to address them rather than ignore them under the guise of sovereignty and territorial integrity." In intrastate decision-making processes, the right to self-determination in this sense does not remain a vague right to participate but is equipped with certain qualitative standards to review processes of participation at the domestic level. Participation would not be limited to the basic political right, but economic projects and the development of the legal order.[474]

The legal cause of action against infringement of economic self-determination by subjects of international law is recognised in international conventions and treaties. The international organisations, as subjects of international law that have a significant impact on the exercise of the right to self-determination, are obliged to respect this international law principle. As a specialized agency of the U.N, the IFIs particularly the IMF and World Bank must uphold this right as part of their duty spelt out in its Relationship Agreement with the U.N., The Agreement stated that "the Bank is a specialized agency established by agreement among its member governments and having wide international responsibilities, as defined in its Articles of Agreement, in economic and related fields within the meaning of Article 57 of the Charter of the United Nations. The IFIs are required to function as, an independent organization and operate strictly according to the international law that created them.[475] This creates a legal basis and international responsibility in making decisions on loans and matters directly within the competence of any general international organization having specialized responsibilities to be consistent with the UN and international law. International law contains within it other bodies of law, such as the human rights law and international relations law. Thus, human rights and economic independence issues become a relevant issue in the IFIs decision to make loans. Although civil and political rights, as well as economic and social rights such as the right to an adequate living standard, education, nutrition, health, and so forth, are the vital rights protected by the international human rights conventions, the right to self-determination has been characterised as the cornerstone for people attaining these rights.

[474] *Ibid*

[475] Reus-Smit, C., Biersteker, T., & Smith, S. (Eds.). (2004). *The Politics of International Law* (Vol. 96). Cambridge University Press.

4.8. Summary of the Chapter

The IFIs policies of free-market and good governance, particularly as it is promoted by powerful international financial institutions such as the World Bank and the IMF, replicates in significant ways the civilizing mission that has given colonialism its impetus, and that has continued to be an important aspect of contemporary relations between the developed and the developing world. It creates a system of administration in less developed countries.[476] Studies on the Structural Adjustment Programmes (SAPs) in Africa, described as emerging under the spell of globalisation, have raised significant issues that need to be further investigated. The introduction of the IFIs economic reforms in Nigeria was accompanied by serious debates and campaigns against the policies as violations of the constitutional rights and democratic processes. This chapter discussed and analysed those distinct economic reforms introduced by the SAPs, including particularly the privatisation and trade liberalisation reforms. The harsh economic and social living conditions of Nigerians led to so many questions being asked about national restructuring and self-determination. The chapter analysed the right to self-determination in national and regional laws and distilled the constitutional as well as the international treaty obligations of Nigeria. These laws include the African Charter, a human rights treaty that has been domesticated in Nigeria, which provided for the right to self-determination of peoples and therefore raised crucial questions as to the domestic implementation of these rights.[477] The chapter analysed the demands of people and ethnic groups for self-determination as a demand against the economic injustice and policies of the IFIs imposed as lending conditionality. The IFIs is the creation of international law, specifically, international treaty law and therefore are obliged to respect this international law principle.

[476] *Ibid*

[477] Egede, E. (2007). Bringing Human Rights Home: An Examination of the Domestication of Human Rights Treaties in Nigeria. *Journal of African Law*, *51*(2), 249-284.

5. Chapter Five: Research Methodology

This chapter outlines the general research methodology, design and methods used in gaining knowledge about the phenomenon under study. As mentioned in previous chapters, the study aims to explore and analyse how the sovereign debt regime in Nigeria affects the people's right to self-determination and the role of international law. The study explores the dynamic evolution of the right to self-determination over time and how new emerging experiences affect the present-day application of self-determination; this, therefore, raises questions about the methodology involved in the process. This chapter discusses the design and selection of the research ontological and epistemological beliefs, the case study method, the data gathering methods and the data analysis used in the study. It discusses the rationale behind the adoption of qualitative research methodology as a framework that guides the research choice of techniques and methods such as observation and interviews used in the investigation and analysis of the case study. The qualitative methodology accommodates both empirical as well as a doctrinal legal approach to exploring and collecting different sources of data used to construct meanings and interpretations of the study phenomenon. The doctrinal legal sources are primarily concerned with a detailed and systematic analysis of the rules governing the legal issue(s), the relationship between the rules, areas of difficulty and, perhaps, future developments.[478] At the same time, the empirical data embody the original data within the research, which best explain the impacts of the sovereign debt conditionality on people's right to self-determination, as will be explained further in this chapter.

5.1. Research Philosophy; Interpretivist Ontological and Epistemological Approach

The main reason for the engagement with methodology[479] in this study is to address the scientific methods of acquiring knowledge on the research topic that involves something much more profound than desirability – to the philosophical question of "Why".[480] Generally, answering the question "why" requires the research to make several core philosophical assumptions concerning two dimensions: the nature of reality of the phenomena under study and the nature of scientific research. The answer to these questions forms the two

[478] Van Hoecke, M. (Ed.). (2011). *Methodologies of Legal Research: Which Kind of Method for what Kind of Discipline?*. Bloomsbury Publishing.
[479] Holden, M.T. and Lynch, P., (2004). Choosing the Appropriate Methodology: Understanding Research Philosophy. *The Marketing Review*, *4*(4), pp.397-409.
[480] *Ibid*

philosophical approaches of ontology (reality), epistemology (knowledge).[481] Regardless of the research orientation, these assumptions are consequential to each other, and the view of ontology affects the epistemological persuasion that, in turn, affects the choice of methodology, which logically follows the assumptions the research has already made.[482] It is occasionally said that social research could get along quite nicely without philosophical reflection.[483] Yes, the practice of social research would probably carry on, but it would still have certain philosophical implications if two researchers engage in separate researches on the existence and nature of poverty in a society.[484] The first might be informed by the individualist assumptions, and the second may take an opposite, collectivism, viewpoint. Each could claim not to be touched by philosophy, yet the outcomes of the research would probably be different simply because they began from different starting points that, in turn, were grounded in particular philosophical assumptions.[485]

Generally, the methodology is probably not the strong point of international law, hence, some of the limitations in the methodology and the ontological and epistemological decision in this study reflects the tradition in the general field of the study. The ontological approach in this study relates to the common assumptions made about the nature and reality of international law and its concept of existence and universality; how the functional regimes of international law shape the world. The adoption of the interpretivist ontological approach in the study of international law explains the belief in this study of the existence of international law as socially constructive legal norms that define human relations beyond the territorial borders of states to pursue a cluster of common aspirations. This lays the foundation for the ongoing efforts to create a legal regime that brings together different voices into the table, which forms the cluster of aspirations. Determining and ascertaining these norms is what constitute the epistemological question of the research about international law. Thus, the epistemological approach to the study of international law entails the methods of determining the existence of rules of international law and the application of the knowledge of the reality of international law. In the epistemological approach in this study, the methods of determining the rules of international law must be distinguished from

[481] *Ibid*
[482] *Ibid*
[483] May, T. and Williams, M. (2002). *An Introduction to the Philosophy of Social Research*. Routledge. P10
[484] *Ibid*
[485] *Ibid*

the methods of application of these rules in a specific case.[486] The application of a law of self-determination in international law is a second step following its determination. It is with this narrower meaning that the terms 'induction' and 'deduction' usually are used.[487] The use of these terms answer the questions: What form of reasoning should the study adopt to gain a better understanding of phenomena? What is the status of what we believe we know and how do we ascertain if what we believe we know is true or false? How do we justify our beliefs to others? Is there any difference between knowledge acquired from learning theory and knowledge acquired through observation?[488]

In the study of rules of international law, inductive legal reasoning is primarily concerned with rigid interpretations and inference of a rule from the explicit universal legal interpretation.[489] In this case, logical reasoning is replaced by legal reasoning, which has its basis in the traditions of the legal system. This entails the positivist philosophy, which assumed reality to be existing independent of the perceptions, beliefs and biases of the researcher. It assumes that good research consists of the undistorted recording of observations obtained through efficiency-driven methods of investigation, and the researcher is, therefore, a sort of 'spectator' of the object of enquiry.[490] Contrary to the positivist inductive approach, the deductive approach, as it applies to this research, is committed to an understanding of the normative value of the law to draw new meanings and interpretations.[491] The deductive approach infers, by way of legal reasoning, new rules from an existing and generally accepted rule.[492] Hence, the analogical deduction goes in line with the interpretivism approach, which holds the position that our knowledge of the general norms of international law and its application to a context is a social construction by legal researchers and that the reality is constantly changing and can best be known through the interpretation of the different experiences of the researcher.[493] The research, thus, sees the claim for international law neutrality and objectivity as simply unattainable. Despite the positivist's strong argument for inductive reasoning and a value-free approach to international law, the central premise of interpretivism in this study is that the law is an interpretive concept as opposed, significantly,

[486] Talmon, S. (2015). Determining Customary International Law: the ICJ's Methodology between Induction, Deduction and Assertion. *European Journal of International Law*, *26*(2), 417-443.
[487] *Ibid*
[488] Chia, R. (2002). Philosophy and Research. *Essential Skills for Management Research*, p.1.
[489] Talmon, S. (2015). 486
[490] Levers, M. J. D. (2013). Philosophical Paradigms, Grounded Theory, and Perspectives on Emergence. *Sage Open*, *3*(4), 2158244013517243.
[491] Çali, B., (2009). On Interpretivism and International Law. *European Journal of International Law*, *20*(3), pp.805-822.
[492] Talmon, S. (2015). 486
[493] Thanh, N. C., & Thanh, T. T. (2015). The Interconnection between Interpretivist Paradigm and Qualitative Methods in Education. *American Journal of Educational Science*, *1*(2), 24-27.

to a neutral concept. Thus, justification, as opposed to the description, is necessary for a group of interpreters of law that disagree about what the practice requires.[494]

The interpretivist approach in this study serves the essential aim of identifying and extracting, using deductive legal reasoning, the truth about the changing demands of the right to self-determination in the less developed countries and the interpretation of its application vis-à-vis sovereign debt bondage. This requires analysing the law by taking a stand among values and interests,[495] which although a normative position cannot be true or false; however, must be justified. The general advantage of the approach is that it essentially brings the voice of the third world countries in problem-solving and setting a new framework to the enormously complex area of law.[496] The normative position of the study comes from the analytical understanding of international legal order. It questions the role of the mainstream human rights and liberal democratic concept of justice, which based on the notion that insists that universal human rights and good governance mission have automatic legitimacy and can compel fulfilment through the international level of pressure and certain forms of intervention by international institutions. Part of the study aim is to reflect and analyse, using value-judgement observations, the role of the international human rights law and liberal democratic theories in the ex-colonial African territories' struggle for economic self-determination against the growing influence of international organisations. The value-subjective Interpretivism approach makes the crucial link between the complexity of human values, the rationality of all value-based decision-making, and the analytical viewpoint of the third world approach to international law. The approach defines the complexity and disagreement as one about what values lie at the heart of the law. Concepts such as legality, justice, or democracy, exist because they contribute to some other independently identifiable deeper value. The interpretive (deductive legal reasoning) approach adopted in this study goes beyond the surface meaning, to analyse the normative value of the right to self-determination and how it could best be applied to present-day situations. The argument about what value(s) lie at the heart of law indicates that without that value at work, one cannot talk about law in any meaningful way.

As part of the general epistemological approach in this study, inductive reasoning is also applied to examine the legal authorities and discern the existence of rules of self-

[494] *Ibid*
[495] Hage, J. (2010). The Method of a Truly Normative Legal Science. Available on: http://jaaphage.nl/pdf/TRULY_NORMATIVE_LEGAL_SCIENCE.pdf (last accessed on 1st January 2019)
[496] *Ibid*

determination under international law. For Legal research, success has been measured within a doctrinal methodology framework, which involves a two-part process; first locating the sources of the law and then interpreting and analysing the text by tracing the legal precedent and legislative interpretation. Research into the Legal rules largely takes on the quality of being doctrinal because they are not just convenient norms, but are meant to be both consistently applied and evolve gradually.[497] Like any other legal rules, international law of self-determination, in this case, is a black letter law that is based on the interpretation of statutes, cases and customary international law practices.[498] Accordingly, it follows that the inductive doctrinal method aims to present the law as a coherent set of principles, rules, and exceptions that fit into the rules (not arbitral) so that the system remains coherent. The critical and in-depth analysis of the law of self-determination involves an examination of the various international law instruments, such as the UN Charter, case laws, and customary practices. Therefore, the inductive approach also forms an essential feature of the analysis of the concept and all relevant legislation and case law to relevant to the subject matter under study. Overall, the inductive and deductive method in this study is based on the general interpretivist ontological and epistemological approach, which set to explore and acquire knowledge on the legal right to self-determination and the effect of sovereign debt conditionality on the application of the right.

5.2. Research Design

The qualitative case design process in this study explains the path through which the research is conducted from research methodology, population sample, data collection methods, gaining access into research sites, qualitative data analysis, data management and ethical consideration towards achieving the overall objectives of the study. The design process involves many interrelated decisions, which focuses on the research objectives of exploring the effect of sovereign debt conditionality on people's right to self-determination in the less developed countries, using Nigeria as a case study. The design explains the adoption of a qualitative case study as a way to narrow the research and present an in-depth study of a particular social context rather than a broad and sweeping one.

[497] Hutchinson, T., & Duncan, N. (2012). Defining and Describing What We Do: Doctrinal Legal Research. *Deakin L. Rev.*, *17*, 83.
[498] Chynoweth, P. (2008). Legal Research. *Advanced Research Methods in the Built Environment*, 28-38.

5.3. Research Methodology: Qualitative Case Study

This study adopts the qualitative case study methodology to address the research objectives. The qualitative case study methodology covers a wide range of techniques and approaches that allow the research to explore and examine people's experiences in detail using flexible research methods such as interviews and observations.[499] Choosing a research methodology depends on the research question, the extent of control the researcher has over research and the degree of focus on contemporary events. In qualitative studies, the research is required to develop an initial set of questions, once the data collection starts, the interpretive role starts by observing, exercising subjective judgment, analysing and synthesizing data findings. Thus, the research outcome reflects the research value-judgement as I make claims about the meaning of the data and multiple realities. Although there are many different approaches or paradigms in qualitative research, this study employs the qualitative case study methodology thought to be useful to answer the "how and what?" questions in an in-depth and holistic manner. The approach is well suited for research that seeks to understand a complex issue through a detailed analysis of related events. Therefore, the case study in relation to this research involves specific procedures and techniques used to explore primary and secondary data sources, including observational data and most importantly an in-depth interview with a purposeful and theoretical sampled study population in Nigeria. The approach also analyses diverse primary and secondary legal sources, such as statutes, case law, and customary international law, as well as other secondary sources from textbooks, law periodicals, journal articles, government achieves, and other publications. These various sources of data are used to provide the basis for the evaluation of the concepts and theories on the right to economic self-determination. One of the distinguishing features of qualitative research is that the approach allows the research to identify issues from a perspective and understand the meanings and interpretations of the study phenomenon.[500]

5.4. The Rationale for Using Case Study

The case study approach in this study presents an in-depth examination of a social problem within a specific context using qualitative research methods intended to capture the

[499] Hennink, M., Hutter, I., & Bailey, A. (2010). *Qualitative Research Methods*. Sage. Pp9
[500] *Ibid*

complexity of the study phenomenon.[501] The rationale behind using the approach is to deeply explore several data sources on the topic to add to the general knowledge on what is already known in previous studies and offer new findings and understanding to the general research concepts. The importance of the case study approach is that it attempts to examine the contemporary challenges of the application of economic self-determination in the context of sovereign debt bondage in real-life, especially when the margins between the phenomenon and social context are not clear.[502] For that reason, the qualitative case study methodology gives special attention to the holistic understanding through detailed observation, reconstruction and analysis of the study phenomenon.[503] More importantly, the case study approach in this study tallies with the interpretivist ontological and epistemological approach on the nature and character of international law and the social construction of the new international legal framework that encapsulates the voice of the third world countries in international law. Hence, the selection of case study methodology is based on its ability to contribute to the understanding of the real world and thus the challenges of application of economic self-determination in the context of sovereign debt bondage in Nigeria.

While a case study can be either a single or multiple-case study; however, this study uses a single case study. A single case study is often useful to research seeking to confirm or challenge theory, while a multiple case study is used to replicate and generalise result findings. The selection of a single case study in this study is guided by the nature of the study as an intrinsic case intended to learn about a unique phenomenon, which the study focuses on.[504] A single case study is frequently criticised for its inherent limitation of lacking robustness and generalised applicability, and in many instances, a multiple case study is seen to be more robust and inspire confidence in the generalisation of the results and replication of the study findings. However, this criticism has been refuted by Yin who pointed out that generalization of results, from either single case, is made to the theory and not to populations and thus, the significance of a single case study is often based upon theoretical sampling rather than statistical sampling. As the general objective of a study is to obtain in-depth data on a given social problem, a representative case may not be the most appropriate strategy. Instead, a single case study that is likely to either clearly confirm or irrefutably falsify the research propositions will be more suitable. In other words, the key distinguishing factor in

[501] Feagin, J.R., Orum, A.M. and Sjoberg, G. eds., (1991). *A Case for the Case Study*. UNC Press Books. P3
[502] Yin, R.K. (1981). The Case Study Crisis: Some Answers. *Administrative Science Quarterly*, *26*(1), pp.58-65.
[503] Tellis, W.M. (1997). Introduction to Case Study. *The Qualitative Report*, *3*(2), pp.1-14.
[504] Baxter, P. and Jack, S., (2008). Qualitative Case Study Methodology: Study Design and Implementation for Novice Researchers. *The Qualitative Report*, *13*(4), pp.544-559.

using single or multiple research is that while a multiple case study (mostly used in quantitative studies) seeks to explain, a single case study (mostly applicable in qualitative studies) seeks to understand.

5.5. Using Nigeria as a Single Case Study

As an intrinsic single case study, the rationale behind the adoption of Nigeria as the social context is based on the uniqueness of the case of Nigeria that distinguishes it from all other African countries.[505] The selection of Nigeria as a single case in this study is based on the goal of choosing a less developed country that is, neither extreme case nor deviant case, but that which is typical and likely to extend the emerging theory of *TWAIL*. Contrary to multiple case study's quantitative logic, the single case study of Nigeria is chosen for theoretical reasons as a means of advancing the *TWAIL* through an in-depth analysis of the effect of the sovereign debt bondage and the role of international law on the application of people's right to economic self-determination in Nigeria. The advantages of selecting a single case study are seen in the detailed analysis and gaining a better understanding of "how" and "what" things happen. The factors that influenced the decision to pursue this research in Nigeria and to explore further the research questions stem from the fact that Nigeria is a polity with unique features including its ethnic diversity and its vast (human and natural resources) yet unfulfilled potentials. For a country with Nigeria's vast human and natural resources, it is highly paradoxical that it is one of the world headquarters of poverty and a growing debt crisis. As a comparatively rich country among the African countries, Nigeria had no reason to go borrowing, and this explains a lot about the general sovereign debt phenomenon. The choice of Nigeria for this study is contingent on the understanding that Nigeria, Africa's largest economy, epitomizes both the promise and the problems the continent faces in the 21st century. As Africa's most populous country and largest economy, Nigeria's multicultural, socioeconomic, and political composition allows for understanding the dynamics of governance and political demands of a complex socio-cultural and political setting.

Therefore, the choice of Nigeria is seen as a versatile form of qualitative inquiry most suitable for a comprehensive, holistic, and in-depth investigation of a complex issue in context, where the boundary between the context and issue is unclear and contains many

[505] Harling, K. (2012). An Overview of Case Study. *Available at SSRN 2141476*.

variables.[506] Moreover, being a study on the right to self-determination, the social, economic and political structure and demography of Nigeria is a perfect typical case to explain the growing wave of ethnic nationalism countering the global hegemony. Unlike almost any other country in Africa, Nigeria has within its territory, a substantial number of speakers of three of the five families of languages found in Africa, namely Afro - Asiatic, Niger-Congo and Nilo – Saharan. There is hardly any other country in the world that has linguistic and ethnic diversity as Nigeria. The most populous African nation that has within it, up to 25% of the continent's total population. Hence, part of the essential goals for using Nigeria as a case study is to explore and understand, in real-life settings, the complexity of the modern challenge of globalism against the people's economic self-determination and recommended to answer the research questions. The sites explored in Nigeria are only theoretically determined and not sample representative of the number of populations. Three empirical sites in Nigeria were purposefully selected based on accessibility to agencies, government ministries, departments, Universities and other civil society organizations that participate in policy debates.

5.6. Data Collection Methods

The data collection methods involved in this study are carefully designed within a clear methodological guideline. This involved data collection techniques and procedures, which includes conducting effective interviews, being a careful observer and mining data from documents. For the fieldwork research in Nigeria between March to June 2018, qualitative data were collected via three main techniques of interviews, observation, and archives, in the form of secondary data obtained from government agencies and other organizations.

5.6.1. Interviews

Open and conversational interviews are one of the essential research techniques used for exploring and understanding the real world and getting to know the story behind the research participant's experiences.[507] For that reason, this research study has used face to face

[506] Hollweck, T. (2015). Robert K. Yin. (2014). Case Study Research Design and Methods. Thousand Oaks, CA: Sage. 282 pages. *Canadian Journal of Program Evaluation*, *30*(1).
[507] DiCicco-Bloom, B., & Crabtree, B. F. (2006). The Qualitative Research Interview. *Medical Education*, *40*(4), 314-321.

semi-structured and unstructured interview method covering a wide range of issues relating to the topic of the research. Thirty (30) participants were interviewed face to face, while 20 participants were interviewed through phone calls, emails, and Skype. One of the defining features of these interviews is the attention paid to constructing meanings and understandings from the interactions with the real world and research participants. A few general questions were asked to allow participants to take control of what and how much information they share and how long they wished the interview to continue. Those general questions were followed by probing questions to keep the focus on the vital part of the interview. The interview questions were designed broadly based on Michael Patton six types of interview questions which include; (a) the experiential and behavioural questions, inquiring about what a participant does or has done. (b) The opinion and values questions, which are designed to understand what people think about some issue or experience. (c) Feelings questions, which elicit the emotional responses of people experiences and thoughts.[508] Interviews lasted from 30 minutes to an hour and contained a list of standardized and open-ended questions that offered the necessary freedom and flexibility to elicit as much detailed information as possible.

All oral interviews were conducted in the English language, out of which thirty of the oral interviews were recorded using an electronic recording device with the participant's informed consent. Those recorded interviews were manually transcribed, and twenty other oral interviews conducted via phone or Skype were saved, transcribed and stored in an encrypted media storage device. Participant consents were sought and granted before the interview. This was confirmed through request letters sent to each of the participants with consent forms attached. The participants were contacted via phone or emails, some days before the arranged date for the interview to confirm the appointment and to make them acquainted with the purpose of the research.

5.6.2. Observation:

Observation in this research entails the method of systematic noting and recording of events, behaviours, and interactions in the social setting chosen for the study.[509] Participant and non-participant observation are powerful tools used for collecting qualitative data in this

[508] Patton M. Q. (2002). Qualitative Research and Evaluation Methods (3rd Ed.). Thousand Oaks, CA: Sage.
[509] Hennink, M., Hutter, I., & Bailey, A. (2010). 505 Pp170

research as it offers an opportunity to capture a wide array of information, such as verbal and non-verbal communication, actions. Throughout the fieldwork research, I maintain a record of field notes to complement audio-taped interviews. These field notes were written in a small notebook at the time or after the interview, to keep comments on impressions, contexts, behaviours, and nonverbal cues that may not be adequately captured through the audio-recording. One of the objectives of employing this observational method is to be able to distinguish what is valid and reliable from those unreliable things people make up, where they assert things on the bases of their values and hopes that simply are not true. This could be essential and valuable information during data analysis. The field notes are generally not formal, but they are maintained and secured similarly to audiotapes and transcripts, as they contain sensitive information and are relevant to the research.

5.6.3. Archives:

The existing secondary data sources gathered for this research include; official sources from the Nigerian government agencies records, data from relevant research centres and organizations, published journal articles, books, mass media products, and other internet sources. Some of the government agencies include the National Debt Statistics, the National Debt Management Office, the National Bureau of Statistics, the Central bank of Nigeria, the Bureau of Public Enterprises, the National Council on Privatisation, National Economic Empowerment & Development Strategy, and National Planning Commission. In addition to the sources mentioned earlier, published books and journal articles also helped in gaining a deeper understanding of the theoretical basis of the subject matter of the research. These sources are mainly available in the University library and some of the online databases such as HeinOnline, Westlaw, Lexis law, ScienceDirect and so on. Besides, libraries in Nigeria were utilized to obtain some information that is relevant and specifically available there, such as, local publications and other sources of public opinions.

5.7. Sampling Technique and Participants Characteristics

The sampling technique in this study is modelled on the qualitative theoretical sampling technique that is generally characterized by theoretical sampling, which represents the identification of potential data sources through the emerging data rather than

predetermining the characteristics and size of potential data sources. However, the practical concern for this research and other researches embarking on the qualitative research approach is identifying the starting point of sampling. Logically, a purposive sampling needs to be applied first to identify and select potential sources based on the unique characteristics of the study population. Having recognized the need to sort the initial participant's sample out, the starting point of sampling in this research was identifying those who have the requisite knowledge and lived experience on sovereign debt in Nigeria. The initial purposive sampling identified the potential category of participants who in one way or the other are responsible for policy formulation or legitimization in Nigeria. The academics are almost certainly part of most researches initial purposive sampling, and so, this research started by identifying some of the academics having expert knowledge on the topic.

Given that the goal of the study is to investigate the legal effect of the lending conditions on the people's right to self-determination in Nigeria, the research analyses the direct interactions with different stakeholders and state officials in Nigeria to elicit specific information regarding the public mandate or lack of, and the issues concerning the sovereign debt. The study examined the responses of different government decision-making units, including the state executives, legislators, and other government agencies who are at the centre of actions that can attest through their experience and personal knowledge on the decision-making process established in implementing conditionality for the external financial debt. The selected agencies, executives and legislators are believed to be the ones that can give details on how the process played out and their views on the subject matter. This will lead to a deeper understanding of the phenomenon under study and reveal the different version of the story regarding the affairs of the state. Alongside government officials and agencies, civil society organisations are another vital category being interviewed in this research. The most prominent civil society organisation participating and fighting against loan conditionality in Nigeria is the Academic Staff Union of Universities (ASUU) and the Nigerian Labour Congress (NLC).[510] The selection of these categories was expected to cover distinct experiences and expertise relevant to the study, and not intended to cover population size.

The research identified Academics who are well experienced in the socio-economic and political history of the sovereign debt and who are particularly connected to the academic movement and activism on matters regarding the internal and external affairs of Nigeria. As

[510] Nwagbara, E. N. (2011). 387

interdisciplinary research which covered issues of politics, economics, law and history, the exploration started by interviewing renowned university professors from Political Science, Internal Relations Studies, Economics and History. This initial sampling helped the research in building what was crucial to the empirical data collection process. What was particularly interesting about the interviews held with the selected professors was the fact that, aside from being a highly productive and thought-provoking session, the participants were all keen to support the research by offering valuable materials and connecting me with various important targets. Based on these initial interviews, concepts and themes started to evolve and connect to other core issues related to the phenomenon under study. As mentioned above, the importance of initial purposive sampling in the empirical research was to identify potential information sources that could be used in forming the necessary foundation from which the theoretical sampling will emanate and evolve throughout the rest of the data collection process. Following the initial purposive interviews with academics from diverse fields of study, the participants sampling took another dimension; this time focussed on exploring essential data from the policymaking organs of the country, that is, the executive branch of government in Nigeria.

The targets in the executive branch of government category include stakeholders from the Ministry of National Economy Budget and Planning, Office of the Attorney General of the Federation and Ministry of Justice, the National Debt Management office, and the Central Bank of Nigeria. This category of participants was purposely selected based on the preconception of their capacity as government officials who are constitutionally responsible for carrying out national economic policies, and thus, directly participates in the sovereign loan negotiation process. The rationale behind selecting these participants for an interview is to obtain first-hand information on the content and the process involved in the loan negotiations between the country and the International Financial Institutions. The interview seeks to find out their roles and efforts made in the formation of policies that truly represent the general interest of the people. In addition to exploring the executive governing body, the research identified legislators who are constitutionally recognized and given the responsibility to review and pass into law, the policies proposed by the executive government. The purpose of identifying and selecting participants from the legislative branch of government was based on the research aim to determine the general public interest and their collective participation in democratic governance. Accordingly, I interviewed several legislators to explore the role they played in national debates and public awareness of

sovereign debt and many other related political and economic policies of general public interest. The potential targets in this category are the legislators who aside from their legislative and representative duties, are also principal officers of relevant committees of the upper and lower chambers. These include the committee on External Loans, the committee on National Economic Planning, and the committee on National Privatisation and Commercialization. The idea of selecting these principal officers among the legislators was to ascertain the level of awareness, consultation, and democratization involved in the process of economic policy formulation and loan agreements.

5.8. Gaining Access into Research Sites

One of the most fundamental tasks relating to undertaking fieldwork lies in gaining access to the research sites. Gaining entree into the empirical research sites here refers to the identification and gaining access to a research location and ensuring that individuals will serve and participate in the research.[511] Successful access in this regard will have a significant effect on the nature and quality of the data collected and ultimately, on the trustworthiness of the findings.[512] Accordingly, my fieldwork began by identifying and creating a technique for a systematic and verifiable procedure required for the empirical research sites and the methods of gaining access to the targeted participant and organization. The main techniques used are comprised of planning, strategizing, and devising safety mechanisms. The process began first with safety measures with the identification of the research settings and the best safety mechanisms and ways to go about the investigation. This is especially important because even though some research sites might be relevant, they could also be practically difficult to explore due to safety reasons, hence, even when identified as potential data sources, the sites could not be easily accessible. However, concerning my empirical research sites, those limitations in terms of safety and accessibility proved a manageable challenge and certainly did not affect the general research fieldwork and quality of the data because of the nature and demand of the study.

The field inquiry aims to generate expert knowledge by listening to the voices and lived experiences of people who are an integral part of the political, economic and social organisations in Nigeria. This, therefore, presupposes that the sites explored in this research

[511] Shenton, A. K., & Hayter, S. (2004). Strategies for Gaining Access to Organisations and Informants in Qualitative Studies. *Education for Information*, *22*(3-4), 223-231.
[512] *Ibid*

are only theoretically determined and not sample representative of the population. The empirical sites explored in the research are located across some cities in Nigeria, including Abuja, Kaduna, and Kano. This selection was based not on an effort to gain a larger population size sample, instead, to identify the rich and in-depth source of data that will significantly contribute to the understanding of the study phenomena. The plan was to sample across a range of issues that will ensure the exploration of the study phenomena to its fullest; thus, through a comprehensive initial pilot study on the country's terrain, the research gained a good idea and guide to site selection. The principal places and sites identified and visited are places with specific public institutions and civil organizations where potential data relevant to the research inquiry will be discovered. The most relevant places and sites include Federal Ministries and Institutions, Universities, Research centres, NGOs and civil society organizations. These sites span across the three states mentioned above.

The Federal Capital Territory, Abuja, which is the capital city of Nigeria and home to virtually all the administrative bodies of the country and several other Civil Society Organisations, was one of the first places to be explored. The fundamental task involved in the process of exploring the research sites includes gaining access to the research area. As the country's central executive, administrative and legislative area, gaining access to some sites presented one of the significant challenges, the research encountered. Among the big hurdles encountered include high-security checks, little or lack of support and cooperation from staff and officials. This was due to, perhaps, the political and social crisis that engulfed the country at the time when I was conducting the fieldwork, making it challenging to access some of the research sites, for the reason that I believed may not have been unconnected to the security issues. Luckily, as a recognized member of the Nigerian Barr Association and a researcher from a reputable institution, I was eventually granted entrée in all the targeted sites. Regarding the lack of co-operation from some of the participants, this also has to do with the relatively controversial nature of the research question that makes some participants reluctant to give information. This challenge was also overcome through connections, acquaintances, and demonstration of professional suitability.

Having successfully explored the sites located in Abuja, the research embarked on another trip to other places across the country to explore essential data sources, including Universities, Civil Societies organizations, and private agencies. Additional cities, such as Kaduna and Kano, were identified as potential sources of data and relatively secure location to explore important information. Although the two sites are previously marked as

susceptible to terror attacks and other political and social unrests and hence, making travel to the places permissible only when necessary by the FCO, however, fortunately, there was relative peace at the time when the research took place. Even with the confirmation of relative peace in the places, however, the research was carried out with maximum caution and strict ethical standards. To ensure maximum safety, I have remained ever alerted to what is going on in the places, and the local law enforcement agencies supported me with information on all the necessary risk assessment. With the safe arrival at the second research sites, I went on to explore some of the key universities, research institutes and civil organizations where rich data were obtained. With the help of supporting documents, including my identity as a researcher, I was able to establish the necessary relationship with the participants; most of whom are academics, activists and other relevant agencies in these locations.

5.9. Initial Interviews and Data Coding

After the initial identification and selection of the participants, as mentioned earlier, the research proceeded with oral interviews, while also keeping field note record of any vital observational data. The research relies on a general thematic analysis approach to generate code out of the interactions. Fifteen initial interviews were conducted, five with academics, five with the executive government officials, and another five with the legislators. The initial interviews focused on exploring the relationship between Nigeria and its external financial creditors, including the IMF and World Bank, with the expectation to provide a full and comprehensive account of the lending terms and other issues relevant to the research question. Both Semi-structured and unstructured interviews were conducted for maximum exploration of the participant's general knowledge and deep insight into the subject matter. The initial interview questions were designed based on the distinctive character and experience of the participants, which overall, provided rich and diverse data touching on a wide range of issues relevant to the research inquiry. As the interviews progressed, concurrent analysis of the data was applied, producing code and themes which set the tone and direction to the research of the potential data to be collected in the build-up to the theoretical formulation.

Each of the initial interviews generated key codes, seeking further exploration, for example, the legislator's claims of local support, redirected the research to members of civil

society organizations for interview and substantiation of those claims. Again, the initial purposive sample interviews with the country's executive officials raised different questions that needed further verification and analysis too. In addition to the initial interviews conducted, observational data also formed an integral part of the data collection method. The observational data proved useful in overcoming discrepancies between different claims from the initial interviews, such as, what the policymakers' claim and what the reality was. Some of the vital observational data collected in the early stage of the initial sampling include live attendance of the upper legislative chamber of debate on 2018 budget approval. This data was crucial as it helped establish reality on how the legislative public hearing debate is conducted and the democratic process involved in dealing with the important national matter of this nature. In addition to the National Assembly Budget hearing, other observational data essential to the data collection process include listening to other people's opinions and debates on the external sovereign debt in Nigeria.

5.10. Evolving Themes from Initial Data Codes

Once the first sets of interviews were conducted, the *thematic analytical framework* was applied to analyse the data collected. The thematic analysis involved six levels of familiarising with the data, initial coding, searching for themes, reviewing the themes, naming and reporting. In the initial coding, the data were divided into similar concepts and categories of information. Then the searching and identifying the themes that involved the process of relating the categories and concepts to each other to understand the generic relationships those and the phenomenon under study. Next is the reviewing themes that were applied to integrate the concepts and categories to produce a coherent research theme. Some of the categories generated from the initial coding analysis, particularly from the interviews with the executive government officials here include; the existence of regulatory, financial lending conditions for each of the country's sovereign loans, for instance, the Swiss government gave a condition for repatriation of the 321 Million USD forming part of the Abacha's loot. The condition stipulated that the World Bank should be involved to monitor the utilization of the repatriated funds to ensure that the funds are used for the benefit of Nigerians. From this emerging concept of the existence of lending conditionality in Nigeria, questions arise on how the conditions operated.

Another example of concepts and categories emerging through the comparative analysis of the initial information was the recurring theme of how when conditions are given by International financial institutions, such as the IMF Structural Adjustment Program, the government does not usually consider the long-term effects of those policies and the general public welfare before taking decisions. This emerging concept raises further questions that led to the identification and sampling of potential participants based on theoretical demand. The research now progressively focusses on finding potential sources of data and looking to enrich the emerging theory and explore in in-depth the process involved in sovereign debt conditions and its effect on the application of people's right to self-determination in Nigeria. This includes finding whether those sovereign debt policies approved by the executive and legislative government reflect the general interest and choice of the public. And this is where theoretical sampling comes into action to locate potential targets and direct the types of questions to ask. The theoretical sampling process will be explained in the next section and how it helped shape the emerging theory and steered the research towards the formulation of grand theory.

5.11. Initial Themes and Subsequent Theoretical Sampling

The **t**heoretical sampling in this study entails a qualitative inductive approach of identifying and collecting pertinent data to enrich and refine the categories in evolving concepts and themes usually generated during the initial analysis.[513] After the initial purposeful sampling technique and analysis, the themes provided the platform for theoretical sampling and subsequent identification and selection of potential sources of data.[514] Some of the early approaches of theoretical sampling in this research include; identification of more new sources of data, new research interview inquiries and constant comparative analysis of the data collected. This technique is central to the development and refining of data sources based on emerging concepts and issues.[515] The theoretical sampling does not limit itself to sourcing data that only supportive of the initial concepts and themes, but also those contrasting views that could provide the necessary comparative edge and thoroughness to the

[513] Alemu, G., Stevens, B., Ross, P., & Chandler, J. (2017). The Use of a Constructivist Grounded Theory Method to Explore the Role of Socially-constructed Metadata (Web 2.0) Approaches. *Qualitative and Quantitative Methods in Libraries*, *4*(3), 517-540.
[514] *Ibid*
[515] Breckenridge, J., & Jones, D. (2009). Demystifying Theoretical Sampling in Grounded Theory Research. *Grounded Theory Review*, *8*(2).

theory. The process involved interviewing newly selected participants and analysing the data, moving back and forth between sampling, data collection, and analysis, until the research reaches saturation level, that is, the point where a significant amount of data has been collected, and information appeared to be duplicated.

The new potential sources of data identified comprised of Academics, Lawyers, Human Rights Activists and Civil Society Campaigners. All potential data sources identified in the theoretical sampling are stakeholders in the society who inhabit the space between the state and individuals and liaising between the two together to allow political, economic, social and national policies to thrive. The identified sources possess unique characteristics that fit into the theoretical demand. The identification and sampling of academics, lawyers, activists, and other relevant NGOs was envisioned to bring together different perspective from active citizens on their lived struggles and activism concerning sovereign debt and the national democratic values and principles. Each of these groups of lawyers, academics, NGOs, etcetera, consists of different participants who either directly or indirectly played a significant role in the policy debate as well as actively taking part in important civil and political campaigns concerning the study phenomena. The extension of the theoretical sampling of this category of participants tremendously helped in procuring rich and in-depth data reflecting people's general interest and aspirations, and how people perceived the country's sovereign debt conditionality.

Through the constant comparison and data analysis of the codes and sub-themes generated from the interviews, the research sought both for areas of convergence and divergence in the data to expound the properties of each sub-theme, while progressively focussing on refining until the emergence of core themes. Significantly, new codes were elicited rapidly while the earlier collected data from the initial purposive sample were revised, trimmed, and fitted to the data. After working on the codes and probing all the elements, the research formed a well-developed understanding of the people's thoughts, values and lived experiences about the sovereign debt conditionality and collective control and management of their internal and external affairs. This well-developed understanding of how the participants perceived the issues was carefully analysed and later developed into a report about the effect of sovereign debt conditionality on the constitutive elements of people's right to self-determination set out in the research.

5.12. Techniques of Data Analysis: Coding and Resulting Datasets

A Thematic analysis technique was used in this research to make sense out of data obtained and describe in detail the findings on the sovereign debt conditionality and the challenges it posed to the application of people's right to self-determination. The thematic analysis focuses on identifying themes and patterns of meaning in the data set. The first step involved in the thematic analysis after collecting data in this research was the process of reading and immersing self with the transcribed data to become more familiar with the content of the data and identify the aspect that might be relevant to your research question.[516] The next analytic step involved was the initial coding of the data. In this stage, labels were placed to the datasets identified as practically relevant to the research question. These initial codes were then reviewed and further modified to incorporate new codes until when the data was fully coded. After the initial coding, the next step involves searching for themes and meanings in the data concerning the research question and represents patterns of response or meaning within the data set.[517] The searching here involved reviewing the coded data to identify areas of similarity and overlap between codes and then assigning meaning and constructing themes. These themes are then defined as derived from such as conversation topics, vocabulary, recurring activities, meanings and feelings.[518] The themes that emerged from the participants' stories are organised to formulate a comprehensive picture of their collective experience. The next stage in the process involves the reviewing stage where the catalogued themes are reviewed with the coded data and the entire data set for quality checking and conveniently named as a heading of themes and sub-themes. The next and final stage in them thematic analysis is producing the report.

The final report in this analysis chapter is not only the collection of quotes from the oral and documentary data, but an organised theoretical account constructed based on the data and with the help of specialised academic literature. In other words, secondary material was utilised to enrich the construction of the main arguments of the thesis through a process of reflection of the fieldwork experience and my background as a legal professional. The analysis of the existing literature provides the rich historical, political and social context of the chapter that contributed to the understanding of the context of the study. Special attention was given to the assertions that revealed the thoughts and opinions of the participants and to

[516] Braun, V., & Clarke, V. (2012). Thematic Analysis.
[517] Clarke, V. and Braun, V. (2013). Teaching Thematic Analysis: Overcoming Challenges and Developing Strategies for Effective Learning. *The Psychologist*, *26*(2), pp.120-123.
[518] Aronson, J. (1995). A Pragmatic View of Thematic Analysis. *The Qualitative Report*, *2*(1), pp.1-3.

obtain observational data to have a balanced account of the case. The interviews quoted in this section are those that conveyed and represented the thoughts and feelings of the participants, and the final analysis was edited for brevity, removing those sections that are not adding to the overall understanding of the meaning of the report. Part of the interviews not used were analysed and incorporated into the general understanding of the phenomenon under study.

5.13. Ethical Issues

The data collection process was embarked upon after obtaining explicit approval from the Coventry University Research Ethics Committee. In line with the ethical regulations, the research proceeded with high ethical standards throughout the data collection process to the conclusion of the thesis. Initial informed consent of the research participants was sought before interviews, where a summary of the research background and objectives was communicated to let the participants know what they agree to. This was carried out via letters sent by email, post or direct communication. This is to ensure there is voluntary consent, as part of the research's ethical standards. The research also ensured participants' confidentiality and anonymity. The identity of the research participants was protected using a pseudonym and all other personal details, including a contact address, were kept separate from computerized data. Being a medium risk research, extra caution and ethical considerations were given paramount importance in the research to minimize the risk of harm and injury. To ward off the danger of terrorist attacks or any form of a political crisis in the field settings, the research avoided all crowd gatherings, including political and religious gatherings. As a Nigerian, I was aware of the social and political tension in the research setting and to avoid and minimize this risk, the research skipped and did not include states and places prone to the attacks, as advised by the UK Foreign and Commonwealth office.

5.14. Data Management

Research data management is an essential part of this study that is concern with the creation, organization, and storage of data throughout the study period. The research was committed to the University policy of data preservation and protection under the General Data Protection Regulation 2016 (GDPR). Information collected includes oral, and

documentary data that was properly managed and stored. Oral interviews were recorded using an electronic recording device, transcribed, and properly stored on a secured, password-protected computer and encrypted storage device with access restricted to the researcher. Also, the observational data, including field notes and memoir, are organized and reduced into a single word document and stored in a safe and encrypted storage device. All data collected is used strictly for the declared purpose of the study and retained in line with the Coventry University data storage policy and all personal details of participants were destroyed on completion of the study and the award of the degree.

5.15. Qualitative Legal Sources

The doctrinal component of the research involves a process of identifying the sources of the legal rules and then interpreting the law within a specific context. The relevant provisions to be examined here are the International Law Principle of Self-determination. The primary legal sources of data in this study severally cited earlier in work include International Law legal instruments, such as the United Nations Charter, the International Bill of Human Rights, International Covenant on Civil and Political Right, International Covenant on Economic, Social and Cultural Right, as well as any other relevant laws. Furthermore, court cases, legislative laws and the general state's practice of self-determination are all examined to address the research question. This also involves a review of existing secondary data and legal opinions relevant to the research field. Like any other legal research, the doctrinal component of this research requires a review of existing secondary data related to the research topic. The rationale behind examining the existing literature on the legal aspect of the research is to identify key areas of convergence and divergence that may exist in the internal law principle of self-determination and the related legal opinions of other legal scholars. It also helped offer a more comprehensive understanding of the relevant issues. The existing secondary data sources include essential legal textbooks, journal articles, law periodicals, legislative debates, and other publications. Another valuable source of existing data that was particularly useful in this research has been the International Court of Justice Advisory Committee, which is a committee of legal scholars that address controversial legal issues relating to international law and publish reasoned opinions on the legal question, that is, the principle of Self-determination.

6. Chapter Six: Empirical Findings on the IFIs Sovereign Debt Arrangement and Economic Self-determination in Nigeria

This chapter presents the findings of the fieldwork research conducted on how the sovereign debt arrangement affects people's right to economic self-determination in Nigeria. As established in previous chapters, the International financial institutions often make the conferral of financial credit dependent upon states implementing specific policies or a commitment to conducting itself in specified ways. However, whether or not particular arrangements or sovereign debt conditionality are contrary to the right to economic self-determination, cannot be determined in advance of examination of certain aspects of its implementation. This chapter aims to present the findings of the study that explored whether lending arrangements fulfilled the legal requirement for freedom of choice and the right to economic self-determination. The findings reflect the distinctive insight and local knowledge of nationals on important issues regarding the lending arrangement covering the lending period from the 1980s to 2018. The chapter seeks to build on the aim of the study of constructing meanings from the data that answers the earlier mentioned research questions. While the consequences and effects of International Financial Institutions (IFIs) conditionality have long been the focus of previous researches, the possible impact of loans on people's right to freely decide or resist, received little attention. This chapter provides a rich quarry of analysis of the research findings regarding the key questions that are not adequately covered in previous literature.

The chapter proceeds by presenting the narrative of the study through a nuanced analysis and correlation between the findings and the research questions aimed to answer. The final analysis draws mainly on the experiences of various categories of people, including relevant government officials, people's representatives, and members of civil society organisations, academics and lawyers. Thus, the research findings came from different sources of data ranging from interviews, observations and documentary evidence of the external debt in Nigeria. A thematic analytical framework was adopted which focuses on making sense of the collective and shared meanings across the data set relating to the process of accessing loans in Nigeria including the level of public engagement, mandate and voluntariness. The process involves making observations and identifying what is common to the way the topic is talked about and the recurring themes. Driven by what is in the data, a pattern of meaning within the data provides answers to the research question being explored.

The research identified key concepts regarding the effect on sovereign debt conditionality, including a sense of unease about the increasing role played by the International Financial Institutions and the desire to assert Self-determination by the people. The important concepts are classified into the themes and sub-themes, and the key themes are coded and categorised under headings. The general aim of this chapter is to develop an analysis of the lending conditions as it influences the autonomy and decision-making rights of the people in Nigeria. In other words, the people's right to self-determination.

6.1. Sovereign Debt as Anti-thesis to Economic Self-determination and Autonomy in Nigeria

A number of studies have examined the internal factors affecting the existential threat of the country Nigeria and the deterioration in the economic life and determination. What remains understudied and open to further investigation, however, is the extent to which external forces influence economic autonomy and self-governance. The performance of the constitutional roles of government ensures integrity, accountability and the rule of law in economic matters. The analysis in this study reveals the existence of factors in the sovereign debt arrangements such as the secrecy of the lending agreements, which intricately undermine probity and public accountability and thus remain anti-thesis to people's general economic self-determination. Data from the various primary and secondary data sources in this research pointed in much the same direction to the undemocratic nature of implementation of lending terms and policies. Primary data reveal the causative link between the government's unaccountability and disregards to people's aspirations and the lending arrangement. According to ML one of the interviewee's accounts, "the national assembly platform which supposed to be open for debate to ensure state policies are implemented in accordance with the people's mandate, has been debased in this case of external debt issue in Nigeria." In most cases, the negotiations are not even open to public debate and thus, no room for people to scrutinise the lending agreements. The assertion of ML captures the overwhelming opinion of the civil society organisation interviewed in this research. In the words of A.S, who is a member of the National Labour Congress, "In my experience as a member of one of the leading civil society organisations in Nigeria, the public hearing only function to debate the intention for accessing loan but not to include any of the strings attached as conditions.

On further investigation into the practical operations of the national assembly, my visit to the plenary session signals that the purpose of the public hearing is not to elicit a response from the public, but more to function as a political charade. The public hearing, which supposed to be the platform to get in touch with the views of constituencies, was rather more of a political charade than a proper debate. The personal visit to the plenary session validates the accounts from numerous civil society organisations and concerned citizens of IFIs undemocratic alliance with government officials to imposed lending terms and condition that divest local populations of meaningful participation by shifting decision-making into the hands of distant IFIs boardrooms. It could be argued though that the plenary session is a successive and not a one-off event, therefore, making any claim out of a few deliberations could not suffice. This necessitated further investigation and interviews with both former and currently serving legislative members. The legislators detailed their lived experiences and responses from the legislators suggest that although they try to do their work as good as possible, yet there are few challenges of transparency and accountability with the executive branch of the government. One of the respondent (HGK), a member house of representative, explained the need for borrowing in a particular situation but raises concern about the executive government habitual borrowing and lack of accountability. He discussed the level of coordination between the branches of government, which to him is something that has not been effectively observed, especially on the issue regarding accountability for how the financial credits are being utilised. The Executive and the National Assembly have shared responsibility in foreign policy, but the executive government often mislead the national assembly on the various lending arrangements.

As required by the constitutional provision, any proposal including loan arrangement must be sent to the national legislature for its review and vetting before it proceeds, however, this process was rarely (genuinely) followed in Nigeria. The primary purpose of ensuring check and balances between the two arms of the government is undermined with the circumvention of the internal democratic channels by the executive body in conjunction with the financial institutions as confirmed by a member of the federal house of representative in Nigeria in a recent case, where he lamented the legislatures being bypassed by the executive to carry out specific operations of the IFIs. In a motion moved by the House of Representatives member Rep. Ben Igbakpa, the Rep drew the attention of the house to investigate and probe some of the Lending agreements between Nigeria and China since 2000. The relevant point in the case, as raised in the motion, was the concern that the

National Assembly had been kept in the dark on many occasions regarding the actual terms and conditions of sovereign loans. The motion questioned why the National Assembly was bypassed in the approval and execution of these loan regimes. The representatives alleged their concern about the creditor's agenda and the widespread irregularity surrounding the loan contracts. The lawmaker raised the issue of widespread allegations of heavily inflated Chinese contracts and fears expressed by stakeholders that most of the projects allegedly did not follow proper channels and regulations, particularly the Public Procurement Act, which enforces tendering or competitive bidding.

Speaking on the issue of lack of public consultation, A.S, claimed that the state, as well as the IFIs main reason for avoiding the proper democratic channels, was that the public always reacted against the loan conditionality and policies since the inception of the unpopular SAP introduced in the 1980s. Beginning in the period of 1980s – 1990s, the military regime introduced SAP conditionality, which attracted a unanimous public rejection and negative feelings among Nigerians regarding the financial institutions and their economic policies. The introduction of the policies triggered a massive campaign that echoed the public resentment against the sets of conditionality imposed by the government led by Ibrahim Babangida. Despite the public disapproval towards the lending policies, the program was, nonetheless, implemented to its conclusion. The decision planted the seed for the genealogy of anti-IFIs in Nigeria that lasted well into the democratic civilian regime, with the majority of civil society organisations constant criticisms of the whole process, which was characterised by autocratic alliance and imposition by the International Financial Institutions to ensure compliance and implementation of policies. Although times have changed and the explosive public resentments have been neutralised, but to this day, these resentments are still expressed. Responses from various sources in this research revealed the public outcry regarding the undemocratic process nature of sovereign debt arrangements and the imposition of various lending programs in the country. From the negotiations and the implementation of the lending policies, there have been tensions and dissatisfactions regarding the deals in Nigeria with nine out of the ten different civil society organisations interviewed dissatisfied with the disregard of the rule of law and public interest in the debt implementation.

The IMF staff as well in their reports confirmed this by blaming the standoff between the executive and legislative over the budget and many other pressures coming from different part of the country that inundated the executive and forced them to abandon the IMF and

World Bank reforms.[519] The IMF report linked the disappointing macroeconomic performance due to the lack of strong national policy ownership and commitment to the economic reforms. What this proves is the lending policies lack the general public mandate and enforcement of the policies implies a lack of meaningful people participation in economic governance. The analysis shows a regular pattern of disconnection between the people and the government, even with the mounting public outcry. Even when the government argued to have pursued a homegrown economic policy called the National Economic Empowerment and Development Strategy (NEEDs), the response from the participants suggests the IFIs set the programme. Although the government claimed that the program is entirely homegrown that involved broad consultative and participatory processes, however, the irony of declaring the NEEDs as homegrown, comes from the fact that the program was drawn up from the IFIs PRSP policies, and more so, the role of the World Bank in determining the nature of the reform was crucial. In the first place, it helped to assemble the inter-ministerial committee that designed the reforms while discreetly leaving the initiative with the Nigerian government. The program was formed as part of the recommendation of the IMF and World Bank technical support and orientation done by the staff of the financial institutions on the fiscal policy rules, fiscal federalism and trade reform, among other things.[520] Moreover, the meagre impact of the NEEDs shows that the program does not reflect the real demands for the population pragmatically.[521]

In addition to the lack of public mandate, the data analysis in this study reveals the IFIs lending terms and conditionality deprived the country of its economic aspirations in some other ways. The pressure from the IFIs compelled the administration to pass a series of policies backed by the IFIs. In an interview with M.A (one of the senior government official sitting in the federal executive council in Nigeria), the participant revealed that the country often finds it difficult to implement its economic and social policies due to specific lending terms and conditions. The participant remarked that the international development partners use conditions as a quid pro quo for loans, and often, those conditions might not have taken cognizance of the budgetary plans. He added; “For instance, the Swiss government gave a condition for repatriation of the 321 Million USD forming part of the Abacha’s loot. The MOU stipulated that the World Bank should be involved to monitor the utilization of the

519 International Monetary Fund Country Report No. 04/242, 2004 Available at: https://www.imf.org/en/Publications/Search?series=IMF+Staff+Country+Reports&title=nigeria+&when=After&page=1

520 *Ibid* P34

521 Mosley, P. (1992). Policy-making without Facts: A Note on the Assessment of Structural Adjustment Policies in Nigeria, 1985-1990. *African Affairs*, *91*(363), 227-240.

repatriated funds to ensure that the funds are used for the benefit of Nigerians; however, this agreement might not have taken cognizance of the Federal government budgetary plans for the money sought to be repatriated." The power of formulating policies is as essential as the existence of the state and therefore, must remain within the exclusive purview of the state. By forcing governments to conform to the economic standard on affairs that supposed to be exclusively within the purview of state power explains more about the IFIs power and control over the economic decision in Nigeria with the IFIs lending conditions like a binding authority, acting in a de facto sovereign capacity.

In a 12-months standby arrangement approved from August 2000 from 2000 to June 2001, the directors of the financial institutions noted that part of the challenges in the macroeconomic imbalances in Nigeria could be associated with the increase in government spending. The IFIs expressed their concern and stressed the need for the implementation of prudent fiscal and monetary policies later to be framed into law and be known as the fiscal responsibility bill.[522] The fiscal responsibility policy (promoted by the IFIs technical committee) directed the application of the policy to all tiers of government that cut across large sectors of economic management. There was initial reluctance from the legislative arm of government, noting that the substantial part of public expenditure in Nigeria takes place at the States and local governments as a constitutional duty to provide essential social services such as education, primary health care. Despite both the executive, legislative and IFIs noting that the application of the fiscal rule at the national and sub-national level would be difficult, however, the World Bank suggested the fiscal rule should be considered and applied first to the federal level and eased to the subnational level later. After the debate going back and forth between the legislative and the executive arm of the government, the bill was eventually approved as the Fiscal Responsibility act. The passing of the fiscal responsibility act further reaffirmed the IFIs control over the economic affairs of the state and deprived Nigeria of its economic autonomy. The fiscal and monetary lending terms contained in a technical Memorandum of Understanding between Nigeria and the IMF staff set out performance targets, as well as reporting requirements for the Nigerian reform program supported under the Policy Support Instrument (PSI).[523]

522 International Monetary Fund Country Report 2001. Available at: https://www.imf.org/en/Publications/Search?series=IMF+Staff+Country+Reports&title=nigeria+&when=After&page=1

523 IMF Country Report no.07/20 January 2007. Available at: https://www.imf.org/en/Publications/Search?series=IMF+Staff+Country+Reports&title=nigeria+&when=After&page=1 (last accessed 10th august 2019)

The MoU requires all data on federally collected revenue and federal expenditure to be provided by the Office of the Accountant General of the Federation (OAGF) to the IMF within six weeks of the end of each month.[524] The OAGF will also provide to the IMF monthly federal government capital account balances within six weeks of the end of each month, and a quarterly summary of capital releases and utilization within six weeks of the end of each quarter.[525] Furthermore, the CBN balance sheet is to be transmitted to the IMF every month within six weeks of the end of each month as well as data on foreign assets, foreign liabilities. Petroleum tax collection will be provided by the OAGF to the IMF monthly within six weeks of the end of each month.[526] Data on external debt service payments (principal, interest, and total) broken down by the creditor will be supplied by the Debt Management Office (DMO) to the IMF on a monthly basis within four weeks of the end of each month. As though the demand for access to data on the administration could not be any more intrusive than contain in the abovementioned MoU, they came with a more sweeping demand. The IFIs demanded details of all new commitments of the government for any other external borrowing, to be provided by the Ministry of Finance to the IMF within two weeks of the end of each month. The level of access to information on all the country's economic transactions has a significant impact on the economic autonomy of the country, which has to (sometimes) rely on the IFIs for information on matters that relate to the internal affairs of the country. This especially applies to the newly elected government looking to familiarise itself with the financial records.

Although these arrangements change depending on the situation, in reality, it allows creditors to exert dominance and maintain crucial relevance over the governance. The IFIs quoted this sort of arrangement as part of the measures to ensure transparency on the side of the state; however, what is evident in this case is that as necessary as the transparency is, the excessive intrusion, total surveillance and answerability of the government to the financial institutions deprived the country of its economic autonomy. The periodic assessment of the entire account of the country is beyond anything like fair contractual agreement; it merely puts the affairs of the state under the direction and supervision of the International Financial Institutions. This concern featured throughout the empirical study of the phenomenon of sovereign debt condition in Nigeria, and the responses coming out of the data put the state in a difficult position to implement its independent economic policies.

[524] *Ibid*
[525] *Ibid*
[526] *Ibid*

6.2. Sovereign Debt, Trick, Trap and Perpetual Dependency

The salient feature of sovereign debt bondage in Nigeria is the pressure from international financial creditors pushing for the government officials to borrow against the wish of the government and the local population. Once the officials succumb to the pressure, it then becomes a difficult decision to retract from the legal commitment. The various responses from interviews in this study reveal the government are often powerless in resisting IFIs and their interference in internal economic affairs. If states are to gain the confidence of the creditors and trading partners, they have no choice but to submit to the demands of IFIs and follow the instruction of the institutions. Even when the state appears to be embroiled in socio-economic tumult, the IFIs lending obligations continue to run through, with the state often acting with caution not to violate the legal contract and face international economic sanction and or political isolation. In one of the interviews with the former Nigerian President, he lamented on the growing debt bondage and suggested the country has lost control of its economic affairs with the introduction of various lending conditionality. The former president (Chief Olusegun Obasanjo) warned the government regarding debt diplomacy and the various strategy the country we dragged into debt bondage. “If no action is taken, the legacy that we will be bequeathing to the future generations in Nigeria will have a deleterious impact on our already compromised sovereign existence.”

Speaking from his personal experience, former president Obasanjo explained how debt diplomacy transpired when he was the sitting president. He said, “I have borrowed from the multilateral institutions as a political leader; a painstaking exercise that involved not just a national strategy, but also a continental and international one. Since the 1970s, we were begged to borrow using the logic that we are under-borrowed. The scale of debts we walked in left us with enormous challenges to meet our obligations. One of the recurrent themes from the data analysis is the use of debt diplomacy on subjecting the Nigerian leaders to succumb to the IFIs power over the management of their economic affairs. The current situation of debt diplomacy between Nigeria and the Chinese creditors already has many people as well as civil society organisations in Nigeria, raising the alarm. Speaking on the growing Chinese loans to Nigeria, BIS, a former member House of Representatives, raises the alarm on the growing Chinese loans leading us to a debt trap. China has, for a long time, making it convenient for our leaders to borrow by organising summits to encourage the government to

obtain a loan with no conditionality. He asserted, “Although the Chinese made us understand their lending system not intended to be a threat to the country’s economic sovereignty and self-determination, however, as loans become ever more unsustainable, the relationship is now gradually changing. China is now signing a waiver agreement, which means that the country’s sovereign immunity is to be waived in an arbitration proceeding concerning debt default that could see the creditors take control over valuable assets of the states.

For the IFIs, the inability of the country to clear its debt profile is something that gives them the advantage over the country in imposing their economic policies. The institutions often engage in more unscrupulous lending, which ironically comes with its good governance conditionality. The IFIs complacency regarding the government officials’ embezzlement of the state coffers as a source of personal enrichment practice is not an aberration but the norm given the vast amount of the country’s macroeconomic data they have access to. The poor economic management and systematic embezzlement of part of the loans were more often than not executed under the watchful eyes of the IFIs, or at least it did not lead the IFIs to stop their assistance. The IFIs continue to pretend by insistence on the terms and conditionality of sound economic management; however, neither the debtor nor the creditor demonstrated adequate financial discipline. From this perspective, the debt conditionality was therefore not entirely genuine; instead, it was a ploy by the creditors to hold the country ransom by controlling and restraining the freedom to manage its institutions and economy. In the words of one of the interviewee, “it is interesting how generous the IFIs are in giving out loans to Nigeria looking at the records of embezzlement and irresponsible resource management by successive governments. “Perhaps the best characterisation of the situation is that while the ruling circles and those who benefit from the broken system are happy to maintain the relationship, the IFIs equally see the ruling circles as useful allies in the debt bondage”. A possible explanation for the IFIs motive is in the implementation of certain policies that arguably favoured their open-door agenda, such as privatisation and commercialisation, which allows foreign multilateral corporations to penetrate and dominate the economy.

Defaulting on debt offers the IFIs the advantage to enforce the most controversial idea of privatisation in Nigeria, in which almost all people agreed to the same point that the way privatisation was executed in the country revealed the agenda behind the program. Data from the IFIs documents showed that the Government of Nigeria received various financing from the World Bank for the Privatisation Project, a move which is seen by many Nigerian as a

dubious attempt to hand over the country resources to private corporations, at the expense of well above 200 million citizens in the country. The IFIs keep pushing for privatisation policy on a massive scale with the World Bank focuses on financing the privatisation project rather than the government's prudent resources management. In 2001, the World Bank portfolio approved $114.29m for the first stage of privatisation to strengthen the policy framework and improve the BPE.[527] The Bank endorsed another extended second stage of privatisation moving from the low $200m lending to $500m for the year 2005. The credit was designed and dedicated to Economic governance, Private sector-led growth, and Community development.[528] The project eventually led to the controversial large-scale sale of the number of state enterprises NEPA, NITEL, M-Tel.[529] The privatisation exercise of state enterprises, including the NITEL, the national power company NEPA and oil refineries and commercialisation of NNPC are all being carried out as part of the arrangement with the IFIs. The institutions suggested the need for Nigeria to strengthen its regulatory and legal framework to see the success of the privatisation policy.[530]

Responding to the claims of the IFIs agenda of pushing for debt to gain leverage on privatising government assets, the research data reveals the apparent lack of trust and confidence from the people on the privatisation programs. Most participants lamented the shambolic auctioning of the government assets and transferring control over its wealth and natural resources to private individuals and even foreigners. Unfortunately, despite the public dissatisfaction and resistance from every angle of this country, the government serving the order of the financial institutions went on to implement the policies. Speaking of the ASUU's sustained position against privatisation, one of my interviewees revealed that the argument put forward by the government and the IFIs regards the inefficiency of public enterprises is a fallacy. The only suggestion for the steady push for the implementation of privatisation policy in Nigeria perhaps is not unconnected to two main reasons. First, it suggests the real motive behind the lending was to sets the financial creditors in a pole position to dictate policies and take control of the resources from the state over to the foreign multilateral corporations. Secondly, the disappointing result of the privatisation exercise, evidently suggested that part of the lending motive is about resources control in the country. Not only

[527] International Monetary Fund Country Report 2001. Available at: https://www.imf.org/en/Publications/Search?series=IMF+Staff+Country+Reports&title=nigeria+&when=After&page=1
[528] International Monetary Fund Country Report No.05/37 2005. Available at: https://www.imf.org/en/Publications/Search?series=IMF+Staff+Country+Reports&title=nigeria+&when=After&page=1
[529] *Ibid* P53 appendix II.
[530] *Ibid* P33

were the Nigerian people exploited in the land, but the people also had no rights to speak of against the policies designed to disempower the state and build an international regime that outstrips the sovereign rights of control and management of natural resources of the state.

The pushing through debt to carry ahead with the privatisation policies despite the much resistance from the public gives a big impression that the institutions are in control of the economic affairs of the state. According to Mahmud and other sources of the research data, despite being implemented years ago, the effect of privatisation is still felt in Nigeria. The privatisation represents the end of the control of the state on its resources, and even when the state settle its debt and decide to take back its licensed assets, it has to comply with its legal protection of foreign investment. According to participant M.D, macroeconomic policies such as privatisation had been deceitfully implemented and sabotaged in Nigeria, and the fear is that privatising vital national assets and selling them to private foreign or local investors will leave the country under perpetual servitude to corporations. He added; "looking at the economic and social instability prevalent in the country since the introduction of austerity policies by mid-80s, the only beneficiaries are the multilateral companies whose interest is to find ways to gain control of the economic as well as the political affairs of the country. The point from this is that the IFIs have a range of actions and strategies to impose their policies by giving concessions, reliefs and tacit approval of sabotage. Those reliefs and concession reinforce the yoke under which the IFIs keep the agreements and perpetuate dependency by tacitly approving mismanagement of the borrowed funds with no consequence from the creditor but only at the expense of the population.

6.3. Neoliberal Lending Policies, Socio-Political Disconnect and the Existential threat to Nigeria

The enforcement by the IFIs of neoliberal programmes in the lending conditionality has changed Nigeria's social welfare state policies to now policies taken on an individualistic value basis in Nigeria. Several activists and civil society organisations have criticised the policies as been inimical to the social cohesion in Nigeria. In what has become a major subject of discussion in the academic setting and in mass media, the rising political disorder and the spectre of ethnic secessionism in Nigeria are seen as the causal effects of the neoliberal measures and absolute degradation of public social benefits. What sets the neoliberal individualist policies different from the egalitarian policies is the under-promotion

of social welfare programs by the IFIs as a deliberate attempt to surrender the economic as well as the social affairs to individual responsibility. The logic of promoting individualistic responsibility was entirely congruent with a problematization where problems are seen as an effect of individual factors and therefore preventing holistic revitalisation of public institutions and thus collective determinacy. Meanwhile, the social disorder gives the IFIs an advantage whenever the atmosphere became intense and unbearable; the government see no other refuge than to turn to IFIs for more financial loan and assistance to free up the economy and momentarily alleviate the hardship.

The analysis of numerous accounts of participants suggests the major issue concerning the growing political disorder and the suffering in Nigeria to be a result of the implementation of harsh austerity policies of the IFIs sovereign debt conditions. The IFIs insistence on policies including austerity and a cut in public spending, which on the surface, is seen as policies design to correct the balance of payment, led directly to high rates of unemployment with workers losing their jobs through retrenchment. It also led to many people not being able to afford necessities of life due to wage cuts. This opens the Pandora's Box of social vices including kidnappings, banditry and belligerent activities of groups like IPOB, MEND and Boko Haram, among others. Responses from the interviewed participants from civil society organisations pointed to the economic and social programs in the country as partly providing the impetus for the activities of the MEND and Boko Haram, which although primitive, have an undertone directed against the marginalisation of people and the control of natural resources by a few corporations. However, on a deeper level of observation, though the impoverishing of people in various segments of the country is serving as the rallying cry to the belligerent and secessionist groups, there is more to these sagas. The seemingly unending internal conflicts and instability deeply rooted in the growing anger and frustration in Nigeria is the epiphenomenon of the IFIs deliberate attempt to employ the tactics of divide and rule to distract and defuse the collective determinacy of people and defeat the nationalist goal of regaining permanent control over the affairs of the state. This tactic has so far worked well as now addressing the ethnic and political instability in the country has become the number one priority rather than addressing the economic exploitation and marginalisation.

The revelation of the level of IFIs complacency at the outlandish mismanagement of resources by ruling circles in Nigeria belies the IFIs prudent economic management rhetoric and exposes the disruptive intent of retrenchment and cut in public spending. According to

most of the responses detailed in this research, the IFIs neoliberal policies introduced by the government are not giving people any hope; their demands at this moment are the provision of social amenities such as free education, health care system, steady electricity to name a few. According to one of the founding member of the Centre for Democratic research professor Abdullahi, the IFIs insistence on the neoliberal economic policies antithetical to the economic and social aspirations of Nigerian people illustrates the indeterminacy created that is necessary for the IFIs neo-colonial agenda. The whole idea of the neoliberal economic policies is a worldwide phenomenon adopted specifically to frame the developing countries through gross under-promotion of people's economic and social life due to the policy of cut in public spending.

6.4. Sovereign Debt, Internal Corruption and Anti-IFIs Political Bias

Besides the manifest foreign interference into the economic affairs of Nigeria as a debt recipient country, internal corruption and maladministration of sovereign debt have been major setback regarding the application of people right to economic self-determination in Nigeria. Rather than invest in projects that will lead to development, the government poorly utilized the loans which then leads to continuous borrowing. However, the internal political machinery has succeeded in creating a political bias that often prevents a more balanced and objective assessment of government activities that strongly affects people's aspirations and right to economic self-determination. One of the main problems with the Nigerian sovereign debt is that it has contributed to changing the attitude of the political leaders who find it convenient to associate their failures to the loan conditionalities and get away with it. In one of my research interviews, a senior government official claimed that they are borrowing only because the economic and social situation is dire in the country and therefore no choice is left. Commenting on the issue of loan conditionality, the interviewee pointed to the challenges of some loan conditions which affect national sovereignty but avoided the allegations of lack of government accountability. Although there is overwhelming evidence to suggest there is a conscious effort from the financial creditors to burden the debt recipient country with massive debt and multiple layers of conditionality, however, the debt recipient countries have also their responsibility and share of the blame. The internal political bias that often finds it convenient to throw all blames regarding the debt crisis exclusively on the

international financial institutions has further deepened the local population distrust and resentment in the sovereign debt operation.

The anti-IFIs and internal political bias is an explanation for the weak political and of course legal zeal to hold accountable some of the government officials in the top positions such as the Central Bank and other relevant economic positions who more often than not engage in massive corruption as well as dishonesty while handling the sovereign debt affairs. Quite clearly, the structural adjustment programme introduced with the backing of the financial institutions has had adverse economic and political consequences for Nigerians. However, the way and manner of implementation of the programmes reveal the big role of the mismanagement and corrupt practices that contributed to the worsening of the debt crisis in Nigeria and the increasing agitation for economic autonomy. Although there is a general lack of economic autonomy in the lending pacts, the judicious use and disbursement of the funds by the government officials present a major setback as well. Again the level of secrecy in the loan negotiations is a big issue that not only alienates people from asserting their rights and freely determining their economic affairs but also covering the massive embezzlement by the ruling class. The findings in this study revealed the IFIs conditional lending programs, even if classified as failures for their specific goals and seen as violations of economic autonomy of the country, cannot alone be the only culprits in the unending debt debacle.

The political bias in the sovereign loan operations in Nigeria has successfully cloaked the wrongdoing of the internal political leadership by mostly throwing the financial creditors under the bus and making them the chief target of the internal acrimony towards the SAP and other economic policies. However, our empirical research revealed that internal bad governance, in addition to the external interference, forms the dual causality of debt distress in Nigeria. Listening to the opinions of the participants in this empirical study regarding the debt distress in the country, what is abundantly clear is the bad governance, which affects the disbursement of the funds and the implementation of meaningful projects. According to MD, Nigerians are not against loans but the lack of proper accountability in its implementation. The success or otherwise of any economic policy depends largely on the level of judicious use of resources and good governance. He added that, in Nigeria, as evidenced in the past administrations, the IFIs economic policies such as privatization and liberalization are being mismanaged and squandered.

6.5. Summary of the Chapter

The foregoing discussion in this chapter was based on the field study in Nigeria that investigated and analyse how the sovereign debt conditionality affects the democratic, participatory right and economic self-determination in Nigeria. The research finding was derived from the distinctive insight and local knowledge of nationals on important issues regarding the lending arrangement. The analytical insight into the longstanding lending policies introduced by the international financial institutions revealed the most challenging hiatus including the lack of legitimacy of the loans and the distortion of the internal economic structure that foster new challenge of politics without power. In addition to examining the experiences of the participants, it examined other various sources of data available including existing literature that is critically scrutinised for a better understanding of the historical and social context of the phenomenon under study. The chapter presents a constructive analysis of how the sovereign debt conditionality and lending policies in Nigeria hinder participation in the economic policy choice in Nigeria as distilled from various accounts shared by my research participants. The analysis of the data reveals the IFIs are exerting power and dominance over internal economic affairs and infringing on people's economic aspirations, autonomy and government accountability. The chapter discussed the growing influence and power of international financial institutions that are significantly affecting the decision-making authority in the country and compromising the legislative and executive branches of government.

A more compelling point from the analysis is the point of IFIs complacency and systematic sabotage of lending pacts to gain an advantage, in other words, to create a debt trap. This again explains the failure of the structural adjustment programmes to curtail the outlandish mismanagement of resources by the ruling circles done under the watchful eyes of the IFIs. Furthermore, the enforcement IFIs neoliberal policies, including individualistic social programmes in their lending conditionality have distorted the egalitarian values and breeds selfish individuals and sectarianism that affects social cohesion in Nigeria. This, understood in this study, serves the IFIs deliberate attempt to avert collective determinacy, which poster unity and national resistance. In this case, any resistance coming from a divided people will generally be powerless, weak and ineffective.

7. Chapter Seven: Role of International Law in the Current Sovereign Debt Bondage: A *TWAIL* Legal Solutions to the Debt Bondage in Nigeria

In the previous chapter, the findings of the field research in Nigeria on how the sovereign debt conditionality affects people's economic choice, and economic self-determination was presented. This chapter presents the legal evaluation of the role of international law on the subversion of people's economic self-determination by the IFIs lending conditions, reflecting on the study findings and understandings. The chapter critics the mainstream international law liberal democratic theories and International human rights — in their design and application — promoting the hegemonic interests of international financial institutions, particularly the promotion of neoliberal values and the operation of the global economic order. One important issue identified in the study is that often the violations by the international institutions are obscured by the rhetoric of good governance promoted by the contemporary liberal democratic and human rights regimes. While there is generally more political freedom in the post-independent era, the fundamental challenges in contemporary debt-ridden states, Nigeria in particular, are impingement of people's right to decide on matters as important as the economic policies that affect their life aspirations. This demonstrates the need for evaluation of the role of international law in promoting and protecting the people's right to economic self-determination. The chapter applies the *TWAIL* analytical approach to the problems of application of economic self-determination against the international organisation's ongoing neo-colonial experiences in the economic world order. With these considerations in mind, the purpose of this chapter is twofold. Firstly, to identify the problems that could explain the weak international conceptualisation of economic self-determination. Secondly, the chapter initiates the process of reconceptualising self-determination by focusing on *TWAIL's* counter-hegemonic potential of human rights.

7.1. International Human Rights Law and the Silence on IFIs Economic Subjugation

For a large part of the 1980s and 1990s, the economic crisis and internal agitations for cancellation of sovereign debt agreements have grown steadily in Nigeria. With the return to democratic governance in the 2000s, a window of opportunity emerged for engagement with all parties involved in the debt crisis, to address the allegations of economic subjugation, marginalisation and the growing threat to the survival of Nigeria's political unity. The international human rights regime, with its universal promise of addressing violations of civil

as well as economic rights, appears paradoxically aiding the structural injustices and economic woes in the country, particularly for its indifference towards the systemic economic oppressions by the international organisations. Rooted in the natural rights philosophy and universal protection of minimum standards of rights, the international human rights regime has traditionally favoured the protection of human rights concerning civil liberty and political rights, paying limited attention to the economic oppressions by states and international organisations.[531] Understand from the global human rights regime, the relationship between the state and the people's economic rights does not qualify as rights commanding definitive ruling regarding its safeguard and promotion by the state and the international community. The language of the international human rights convention grants considerable discretion to state authorities and international organisations on the standard of promotion of economic justice by making the second and third generation rights no more than pious wishes, thus, allowing states and institutions to avoid responsibility arising under these rights.

The human rights covenants provided that for the general economic rights, the International Covenant on Economic, Social and Cultural Rights requires 'progressive realisation', and the protection of rights is contingent on the availability of resources. The language used in the human covenant serves to emphasize two important things: First, human rights are graded differently, and secondly, despite the emphasis on the universal and inviolable character of all human rights, certain rights including the second and third generation rights requiring positive actions by states are less relevant in the human rights regime. This leads to the logical conclusion about the weak safeguard and possibly irrelevance of setting a minimum standard for assessing claims of economic oppression and violations of these rights, often seen as less important. The human rights approach of categorising human rights into the generations of right –the first generation of civil liberty rights versus the second and third economic justice rights– have played a big role in obscuring the economic oppressions by international organisations and assisted in promoting the economic hegemony through tacit approval of their policies and good governance mission.[532] In giving preferential treatment to the civil and political rights over the demands of the economic and social rights, and paying limited or no attention to the economic rights

[531] Ssenyonjo, M. (2008). The Applicability of International Human Rights Law to Non-state Actors: What Relevance to Economic, Social and Cultural Rights?. *The International Journal of Human Rights*, *12*(5), 725-760.
[532] *Ibid*

and aspirations of people, the human rights law approach has numerous consequences on the application of justice in Nigeria.[533]

In a groundbreaking decision on economic injustice and violations of human rights, the 2001 Ogoniland case before the African Commission on Human and Peoples' Rights, demonstrate the general flaw of the international human rights regime, despite the decision largely being welcomed as a watershed moment to the adjudication on the matter of economic rights. The complainants (the Social and Economic Rights Action Centre (SERAC) and the Centre for Economic and Social Rights (CESR)) alleged violations of a wide range of economic and social rights guaranteed under the Banjul Charter and other international human rights instruments. The commission examined the complaints and adopted a 'violations approach' seeing as a more feasible and standard approach to assessing and determining cases and situations which may be qualified as violations of economic rights, than the assessment of progressive realisation used in the ICESCR. The commission found the Nigerian government in violation of the rights for the active government involvement in acts denying the free exercise of these rights not because of the measures put by the government on the realisation of the rights. In other words, the violations of state legal obligations to take positive measures aimed at providing economic and social rights has never been in question, and thus, the state enjoys a silent approval on its policies no matter how damaging it is to the realisation of economic justice. Although a significant change of attitude began to occur with the increasing support of economic justice, including the adoption of the Declaration on the Right to Development by the General Assembly in 1986, however, victims of violations of the economic rights still face challenges of not participating and determining their economic affairs freely. In the case of IFIs debt, for example, it is up to the government and the IFIs to decide people's affairs without recourse to economic justice and human rights violations.

The international community in World Summit for Social Development held in 1995 in Copenhagen campaigned for the need to put people at the centre of development, international assistance and cooperation. This and other related human rights campaigns form the core elements of the universal human rights mission which is believed to have created an important mandate by which international organisations and human rights regimes imposed

[533] Anghie, A. (2007). *Imperialism, Sovereignty and the making of International Law* (Vol. 37). Cambridge University Press. **p**262

policies of good governance.[534] The campaigns have ennobled the operations of the international organisations, especially the IFIs who assist the developing states with financial resources, but also wield economic suffering and subjugation that comes with the aid conditionality. The entrenchment of neo-liberal policies by the international financial institutions and the embedding of such policies into the "negative/positive" human rights language sums up the silent approval of policies, which signals an end to the meaningful protection of socio-economic rights and self-government in the era of globalisation.[535] After several years of the implementation of the IFIs' neoliberal economic policies in Nigeria, even the IFIs recognised the sum of empirical evidence regarding their policies could not be said to demonstrate undeniably that the policies have achieved the targeted objective of prudent economic management. The lack of recourse to economic justice in the face of economic hardship and oppressions that destabilised in many ways the essential fabrics of the society reveals the extent of the ineptness of human rights in the international and regional human rights regimes.

The Nigerian experience typifies the failed Universal human rights regime promise of safeguarding all human rights. Having defined their conditionality in Nigeria as driven by the campaign for development, international assistance and cooperation, the financial institutions prescribe different policies have had far more negative consequences on economic rights and self-determination. Far from achieving the set objectives of prudent resource management and good governance, the institutions' programmes had a far negative impact in the case of Nigeria.[536] The evidence concerning the decaying state of the economic rights and resources management in Nigeria is an indictment of the IFIs role, which in their infinite wisdom, decide policies and exercise general supervisory mission over the affairs of the state.[537] The IFIs operation in the internal affairs of the country reflects the status of the legal obligation and the commitment to economic and social human rights have become ineffective, especially in the modern market-driven liberal economic order aggressively promoted by international financial institutions. This issue then raises a question about the relative weight to be assigned to human rights by international law in furthering the mission of universal human rights including the right to economic self-determination that is recognised as the

[534] Ssenyonjo, M. (2011). Reflections on State Obligations with Respect to Economic, Social and Cultural Rights in International Human Rights Law. *The International Journal of Human Rights*, *15*(6), 969-1012.
[535] O'Connell, P. (2011). The Death of Socio-Economic Rights. *The Modern Law Review*, *74*(4), 532-554.
[536] Killick, T. (1985). The Quest for Economic Stabilisation: The IMF and the Third World.
[537] Gregory H, Fox. (1995) Self-Determination in the Post-Cold War Era: A New Internal Focus?, 16 MICH. J. INT'L L. 733.

bedrock to enjoying the panoply of other human rights.[538] If the international human rights regime carries with it a solid understanding of which rights merit respect in the less developed states, and they are, fundamentally, negative rights and minimalist state, it surely then cleared the way for different kinds of external domination.

In addition to the ineptness of human rights, the experience of the country highlights the country is losing more than ever, the grip on its economic autonomy and self-determination, to the international campaign for development, international assistance and cooperation. The weakening of the state power and the presumptive right of people to determine and pursue the economic and social policies to govern themselves freely, calls into question the right of self-determination and the role of international human rights law in addressing the external economic and political subjugation. Against the constitutional policies of social welfare and national harmony between the tribes, the state now becomes the conduit of IFIs neoliberal economic values aimed at the actualisation of a minimalist state. This IFIs mission remains a significant source of power for international organisations used to usurp the state control and distort the original national plans. The state emerged as an apparatus of neo-colonialists, and its rootedness in popular social forces remained extremely narrow with its leaders serving as the puppet. The state lacked the essential attributes that were found in an effective state, namely: sovereignty, nationalism and autonomy. The IFIs continued to control the economies in cohort with leaders who run affairs on behalf of the IFIs to impose neoliberal policies.[539] By depowering the state, it renders the society unstable and incapable of functioning in ways in which it can realize its economic and social potentials. The neoliberal values rigorously promoted by international financial institutions, such as privatisation in particular, effectively reorient the traditional (organic) socio-economic structure in Nigeria and support the economic oppression of giant multilateral corporations.

The actualisation of the minimalist state is enabled by the human rights preferential treatment of civil rights over economic rights, which has cost economic oppressions to be overlooked despite the real danger they pose to the very essence of the existence of the state. The human rights law ultimately tends to argue that civil and democratic rights carry an emancipatory potential for peoples to determine and pursue their economic aspirations.

[538] Anghie, A. (1999). Time Present and Time Past: Globalization, International Financial Institutions, and the Third World. *NYUJ Int'l L. & Pol.*, *32*, 243.

[539] Ndlovu-Gatsheni, S. J. (2012). Fiftieth Anniversary of Decolonisation in Africa: A Moment of Celebration or Critical Reflection?. *Third World Quarterly*, *33*(1), 71-89.

However, in real-world situations like Nigeria, the promotion of civil and political human rights has not helped people to a large extent to advance their aspirations and assert their control over their affairs without simultaneously promoting economic rights. The level of marginalisation and economic instability in the country is a product of the international law differential treatment of the rights and the entrenchment of neoliberalism into the universal human rights mission. The denial of meaningful participation in the economic decision-making of their states, but given the civil and political rights such as the right to vote, for example, does not fulfil people's economic aspirations and self-determination. If the goal of universal human rights law is to protect the minimum standard of rights, economic rights, and self-determination of people are fundamental rights that must have important and distinct application. The transfer of economic power into the hands of people instead of a few private individuals and corporations must be an equally important goal of any human rights discussion.

With the renewed global good governance mission taking centre stage in the current international economic order, international organisations continue to massively influence the decision of states violating people's right to economic self-determination. Tension remained the common factor in the policy formulation of the state, with a minimum achievement of consent only on few occasions. The increasing interference in policymaking and the internal organisation has led to the loss of social values and economic ideals, casting doubt on the essence and the legitimacy of the state. The consequences of economic interventionist policies, or more precisely the free-market policies, results in a lack of economic autonomy and creates the forces that are fast becoming the rallying cry of belligerent groups rising against the state.[540] The shift expanded the range of domestic issues that can be subject to IFIs directives, which is a cause for concern for states self-determination. By exploiting the universal human right and good governance mission, the institutions can oppress people and justify its set of policies that seeks explicitly to reform the political institutions of a state, on the basis that such reform is in line with the good governance mission. Although most initiatives in the developing countries are not the product of state programs but the product of the institutions that reflect more of the global agenda. This has complicated further the question of accountability of the international organisations acting under the cloak of human rights and good governance mission. In this respect, the human right mission is simply a tool that allows the organisations to accomplish its goal of dominating and controlling state

[540] Smith, A., & Smith, A. D. (2013). *Nationalism and Modernism*. Routledge

affairs. The international financial institutions' resolve to reorient the economic structure of the debt recipient countries relentlessly regularise the assault on the right to economic self-determination as contained in the UN documents and human rights conventions.

7.2. Liberal Democracy vis a vis Economic Autonomy in Nigeria.

The United Nations and the contemporary international law regime have consistently narrowed the scope of the right to self-determination to liberal democratic governance in a manner that there is no prima facie case to be made against external economic oppression. It is hardly a debate now that the international financial institution's policies have had a profound influence on the internal affairs of their debt recipient countries, which on many occasions resulted in economic hardship to individuals and groups. However, what is often the case for the people or states who aspire to govern their national economic outlook freely and resist external domination, the conception of self-determination to the confines of internal democracy narrows down their chances to hold external players accountable. The assumed relationship between democracy and self-determination and the general impulse to favoured internal self-determination presents a fundamental challenge to the less developed countries' economic control in the current international economic order. The interpretation of self-determination as the right regulating the relationship of people and its government is not necessarily inconsistent with the right of self-determination, but it ignored the existence of global hegemonic or neo-colonial dominations. It served particularly well the neoliberal policies of international economic governing institutions designed to forestall a more aggressive assertion of the right economic self-determination in the current global economic order. In the long history of Nigerians resistance against the IFIs and other external players, the exercise of the right to economic self-determination has always taken the effect of allowing people to express their will in the form of internal democracy but not in the form of holding responsible the external players. This does not happen in a vacuum.

By definition, self-determination is a right of resistance against internal and external subjugation and interference into the internal affairs of states, which is supposed to be timeless and universal. However, as a direct legacy of colonialism, the liberal democracy succeeded in limiting self-determination narrowly to problematize oppression within the internal democratic and human rights issues.[541] According to Cassese, the right to internal

[541] Farer, T. J. (2003). The Ethics of Intervention in Self-determination Struggles. *Human Rights Quarterly*, 382-406.

self-determination generally meant that the people of a sovereign state can elect and keep the government of its choice, or that ethnic, racial, or religious minority groups within a state have a right not to be oppressed by the central government. This definition, which reflects the mainstream international law of self-determination, is particularly troubling because the understanding that self-determination claims could only be settled by allowing people to speak through the ballot has downplayed the problems of neo-colonialism, particularly in multi-ethnic societies set up against each other. This liberal setup has often resulted in the distortion of social cohesion and led to more external economic domination. For the African traditional economic and social organisation—as opposed to the liberal system, it is a system of the community deciding its destiny based on a principled structural common identity, not interests hidden under the electoral numerical rule. The internal democratic self-determination, which ostensibly meant to guarantee and coordinate the general will of the society, have remained ineffective in resolving the majority Will regarding the sovereign debt bondage in Nigeria.

The manipulation of the decision-making process by external players to repress people's general wills in the economic affairs of Nigeria (as discussed in the previous chapter) has revealed the flaw of the liberal democratic theory of self-determination. Complex economic programmes presented as a single set of financial lending policies create misleading notion about choice even when it passes democratic channels, which complicates peoples consent and the national policy ownership. While this does not necessarily imply that self-determination cannot be expressed in a democratic setting, however, it proves the inefficiency of the liberal democracy to safeguard the essential constituent of self-determination that is collective freedom of choice and protection from external subjugation. The inherent complexities related to liberal democracy is when consent can be obtained in circumstances that are coercive and marked by enormous pressure which makes elections, even when relatively free and fair, become a mere political charade.[542] In Nigeria, successive governments manipulate the electorate and democratic channels in several ways to secure loans regardless of the conditionality attached. Democratic structures were manipulated in both blatant and subtle ways that deprive people of effective participation in the process of choosing national economic policies. Even as the Free, Prior and Informed Consent (FPIC) concept appears to settle the inherent challenges of the liberal democracy, it only settles the issues to a certain degree. The content of the debt conditionality is often manipulated to

[542] Yaffe, N. (2018). Indigenous Consent: A Self-determination Perspective. *Melb. J. Int'l L.*, *19*, 703.

become a matter of choosing between mere stooges of different vested interests which can have a far-reaching impact on the country. Thus, the FPIC becomes a merely procedural, box-checking requirement in these cases.

The IFIs economic interference in Nigeria more often than not takes place in connivance with state officials who break the trust and constitutional mandate assigned to them by the people. This raises questions regarding the democratic processes by which states determine their political or economic affairs. The lack of a proper and effective channel to challenge the IFIs unpopular policies reveals the illusion of the democratic theory of self-determination that tend to ignore the realities of systematic domination in the international economic order. How external powers, such as the IFIs, influence the national democratic processes by taking undue advantage of the weak democratic institutions and bad leadership reveals the lacunae in the international legal regime's democratic model of people self-determination. If self-determination is an idea effectively grounded in the expression of the general will, it must reflect in all circumstances, be it economic or political. The internal self-determination that offers no specific guarantees of protecting external interference, it could be argued, is drained of the determinacy necessary to any meaningful notion of self-determination.[543] It creates incoherencies weakening the objectives of the international law principle of self-determination and the struggle against neo-colonial domination.[544] These struggles have posed practical challenges to the state's self-determination and stability.[545] The liberal democratic system creates an ethnopolitical sentiment that weakens the political order and present external forces the chance to promote their interests by exploiting the rift.[546]

While the central idea of the liberal democratic theory of self-determination is built on the assumption that majority decision cannot validly work against the fundamental essence of the state;[547] however, the idea does not provide a rich conception of self-determination beyond the suggestion that it may be achieved through majoritarian electoral "democracy" writ.[548] In heterogeneous countries like Nigeria, the external economic subjugation revel in the ethnic and political divisions in the country, the central government, rather than the

[543] Franck, T. M., & Franck, T. M. (1990). *The Power of Legitimacy among Nations*. Oxford University Press on Demand.
[544] Fox, G. H. (1994). Self-Determination in the Post-Cold War Era: A New Internal Focus?.
[545] Motyl, A. J. (1992). The Modernity of Nationalism: Nations, States and Nation-states in the Contemporary World. *Journal of International Affairs*, 307-323.
[546] Conversi, D. (2012). Majoritarian Democracy and Globalization versus Ethnic Diversity?. *Democratization*, *19*(4), 789-811.
[547] Tesón, F. R. (1998). Two Mistakes about Democracy. In *Proceedings of the ASIL Annual Meeting* (Vol. 92, pp. 126-131). Cambridge University Press.
[548] *Ibid*

external forces, will end up being subject to perpetual opposition from oppressed and marginalised groups. The rejection of internal governance under those conditions as a means of challenging the gross violation of democratic rights has only contributed to the spate after spate of ethnic conflicts in Nigeria. Very often, the ethnopolitical conflict in most ex-colonial African territories countries, and particularly Nigeria, has more to do with economic injustice and oppressions of this nature. This means that the principle of the liberal democratic theory of self-determination might not be the solution and even need to be discarded for the collective resistance against the ongoing economic injustice and the structural neo-colonial.[549]

7.3. International Treaty Law and IFIs Circumvention of Legal Responsibility

While the debate goes on about the sovereign debt obligations and the legal responsibility for defaulting countries, the international treaty law appeared to have shielded and provided a legal cloak for international organisations against some of the fundamental norms of international law and human rights. According to article 35 of the Vienna convention, "an obligation arises for a third State or a third organisation from a provision of a treaty if the parties to the treaty intend the provision to be the means of establishing the obligation and the third state or the third organisation expressly accepts that obligation in writing."[550] What this suggests for international financial institutions is that, if they are not a party to international human rights treaties or any other international legal treaties, they cannot be legally bound by the provision of the treaty they are not a party to. This is despite the fact that the IFIs continue to have enormous influence over the rights protected by most of the international human rights law treaties. Thus, the IFIs have been successful in their bid to avoid drawing the exact contours of their legal responsibility in more specific terms, and have refused to expressly bind themselves with the human rights treaties despite the remarkable influence their operations are on people's human rights.[551] This situation contradicts the international protection of people's rights to economic self-determination in the indebted states. The international financial institutions are not only subjects of international law who are passive recipients of the rights and obligations, but they are also actors with the capacity to influence the development of international law. As a matter of principle, states and

[549] Binder, G. (1992). The Case for Self-determination. *Stan. J. Int'l L.*, *29*, 223.
[550] Skogly, S. (2001). *Human Rights Obligations of the World Bank and the IMF*. Cavendish Publishing. p90
[551] Ssenyonjo, M. (2011). 534

international law subjects are free to conclude treaties on any subject whatsoever. This however only applies if there is no contradictory customary international law or rules which have the character of *jus cogens*.

Despite contesting not to be directly bound by international law obligations based on the provision of article 35 of the Vienna Convention, however, the international financial institutions are under obligation to observe customary norms of international law in their operations.[552] The provision of article 35 of the Vienna convention does not relate to norms of international law that are, by their nature, a rule that cannot be contracted out, given the fundamental values they uphold within the international legal order. By their very nature, the *jus cogens* concerned all states and 'all states can be held to have a legal interest in their protection; they are obligations *erga omnes*'. No exhaustive list of peremptory norms have been drawn, but they are commonly recognised to include the prohibition of the use of force between states, the prohibition of slavery, racial discrimination, torture and genocide, as well as peoples' right to self-determination.[553] All subjects of international law, including international organisations, have an obligation to respect, protect, and fulfil its *erga omnes* obligations above any other legal obligations. The International Court of Justice stated in the *Barcelona Traction case* that there existed an essential distinction between the obligations of a subject of international law towards the international community as a whole and those obligations arising out of the diplomatic or bilateral treaty. Self-determination, being a *jus cogens* norm was established by the ICJ decision in the East Timor case where it stressed that the right to self-determination 'has an *erga omnes character.*[554] Whether this position applies to economic self-determination is debatable. What is certain, however, is that with the growing development and universal recognition of the right to economic self-determination, it is no longer a principle applied on an ad hoc basis and as a matter of convenience, rather one of the fundamental customary norm of contemporary international law.

While avoiding legal accountability to customary international law, the institutions have used the treaty law principle of *pacta sunt servanda* to enforce agreements, which restrict the liberty of states in an excessive manner that endanger their most essential rights. The principle of *pacta sunt servanda* applies to loan agreements voluntarily concluded; however, it must not contradict self-determination as states as well as international

[552] *Ibid*
[553] Lagerwall, A., & Carty, A. (2015). Jus cogens. *Oxford Bibliographies-International Law, 1*.
[554] Shaw, M. (2017). *International Law* (8th ed.). Cambridge: Cambridge University Press. P125

organizations cannot contract out the norm. Hence, the institutions are required to cooperate to bring to an end any serious breach of people's right to self-determination and shall not recognize as lawful a situation created by such a breach. The obligations of international financial institutions in their operations are equally dynamic, changing to the different forms of operations with its indebted member state.[555] However, the initial response to the demands for greater legal accountability was that of denial of the full responsibility regarding the internal affairs of its loan recipient states insisting on its apolitical character.[556] The institutions have consistently resisted outside interference in their decision-making and administrative processes and have repeatedly opposed recourse to external adjudication for disputes with member states. The institutions have reserved for themselves the right to interpret their constitutions and by-laws and, while both have agreements with the United Nations giving them authority to seek advisory opinions from the ICJ on matters of interpretation and legal issues arising from their operations, this procedure has never been utilised.

7.4. A *TWAIL* Counter Hegemonic Solutions to the Sovereign Debt Bondage from within International Law.

One of the objectives of this study is to attempt to offer potential legal solutions to the challenges of the application of economic self-determination in the contemporary sovereign debt bondage, drawing from the *TWAIL* approach to international law. The *TWAIL* approaches have been generally criticised for their failure to cultivate practical examples of counter-hegemonic resistance and the lack of concrete alternatives against neoliberalism, as perpetuated by international law. The *TWAIL* counter-hegemonic approach in this section attempt to convert the languages of oppression into ones of emancipation, thus, accommodating a dual approach that entails a commitment to international law while simultaneously advocating transformations of the system. The counter-hegemonic approaches in the context of *TWAIL* are not usually as drastic such that to advocate the wholesale rejection of international economic law and human rights law regimes, but not equally, a question of co-opting the conventional practice. The approach is to make good use of international law and fulfil the universal declaration of self-determination and equal

[555] Bradlow, D., & Naude Fourie, A. (2011). The Evolution of Operational Policies and Procedures at International Financial Institutions: Normative Significance and Enforcement Potential. *Available at SSRN 1858897*.
[556] *Ibid*

right for former colonial African peoples. The practical step in achieving the said *TWAIL* objective regarding the application of the right to economic self-determination is to promote the revolutionary character of self-determination, which required first, recognition of the neo-colonial vestige within the international law, which encourages economic subjugation and injustice. The next section attempt to offer an alternative understanding of self-determination that entails legal solutions and measures to address the sovereign debt bondage.

7.4.1. United Nations Decolonisation Mission and Cancelation of Conditionality in Future Sovereign Debt Arrangements

In four decades of the IFIs vigorous campaign and implementation of the economic policies and lending conditions, nearly all loan facilities failed to live to the advertised effect of addressing the challenges in Nigeria. Despite the recurrent and predictable setback of the financial credit in the country and the overwhelming public disapproval of the lending agreements between the state and the IFIs, however, the country remains legally and politically bonded to implement the financial creditors' economic policies as part of the lending terms and conditions. The scenario only points to one direction, which is the debt conditionality not introduced to reform the economic structures in a way that will contribute to robust economic growth and development but align and subjugate the economy of the debt recipient states to that of the financial creditor's interest. As established in the previous chapter of how sovereign debt affects people's economic self-determination, the IFIs lending conditions are simply divorced from the social, economic, cultural and political realities of Nigeria. The only explanation for the IFIs incessant lending is perhaps that sovereign debt is being used as a mechanism of economic control which serves the interest of the financial creditors. While the lending obligations and conditionality such as privatisation and liberalisation have, over some time, caused a nearly total lack of control and management of resources in Nigeria, what is more, damaging is that restriction of people's freedom of choice and consent have sparked growing ethnic separatist crises. The distinct effect of the sovereign debt bondage is the violation of the generally accepted ICJ conception of self-determination as a customary norm of international law, which connotes the freedom of the population of a sovereign state to determine its internal political order without external interference.

The emerging self-determination claims and the shift from classical colonial domination to neo-colonial economic domination have raised questions regarding the normative value of self-determination and the UN decolonisation mission. The current global sovereign debt bondage presents new challenges that require updating and redefinition of the international legal right to self-determination and the way it is framed. The hitherto UN decolonisation mission has proven no longer adequate tools to deal with the growing cases of self-determination, whether economic or military domination. To fill in these gaps and fulfil the normative promise of self-determination as the emancipatory tool to check the excesses of power of both internal and external oppression, the decolonisation mission of the UN must be reintroduced and redefined to include the abolition of neo-colonial features in the political and more importantly economic relations. The UN, following its mandate, must continue to play an essential role in getting rid of some of the international law colonial vestiges for the attainment of full self-determination sought in its Charters.[557] Thus, in a legal sense, the enduring and pervasive neo-colonial operations of the IFIs in the sovereign debt bondage of the debt recipient country can only be resolved with the radical abolishment and decolonisation of the neo-colonial relations between states and the financial institutions. International law must live to its commitments of ensuring the people's right to assert their will. This sort of right must be applied to both internal and external authority. The right to economic self-determination should feature the right to decolonise the pervasive sovereign debt bondage perpetuated by the international financial institutions and their local government official clients.

Although self-determination has undergone considerable transformation, the decolonising character of the right has been an important component of the right, both in the sense that its essence and in its demonstrated capacity to revolutionize relationships between peoples and metropolitan powers.[558] Self-determination has frequently been referred to as the right of a colonised people to create a State both free from a colonial power or foreign domination in the postcolonial period. Despite the modern conventional views ruling out the application of colonial self-determination once a state became independent, however, ICJ cases proved wrong these views in the application of the right in South Africa and Palestine, who had been under similar colonial domination. These ICJ decisions suggest the application

[557] Deinla, J. S. (2014). International Law and Wars of National Liberation against Neo-Colonialism. *Phil. LJ*, *88*, 1.
[558] Maguire, A., & McGee, J. (2017). A Universal Human Right to Shape Responses to a Global Problem? The Role of Self-Determination in Guiding the International Legal Response to Climate Change. *Review of European, Comparative & International Environmental Law*, *26*(1), 54-68.

of self-determination, as well as the decolonisation mission, is not time-bound and can be extended to peoples who had once declared independent. The interpretation of the right to self-determination to internal democracy or human right align with the IFI's neoliberalism, which undermines the economic self-determination of the debt recipient countries and debases the core normative values of self-determination as a right enshrined in the UN Charter and other relevant international conventions to deal with foreign domination.

The decolonisation of sovereign debt relationship will help countries ravaged with debt bondage to achieve the core normative component of self-determination, which can bring changes to the global economic order. The application of people's right to economic self-determination must be interpreted to reflect the people economic autonomy and acknowledge the need for a radical approach to include termination of all financial credit relationship. For the optimum application of the right to economic self-determination in the context of sovereign debt bondage, a revolutionary approach must seek to suspend any future lending relationships between Nigeria (and perhaps other less developed countries with similar experience) and international financial institutions as a response to the claims of neo-colonialism. The suspension of any further IFIs lending arrangement will be a necessary measure to deal with the debt bondage akin to the decolonisation process, which terminated the imperial rule and external political domination of the former colonial African territories. The specific derive or goal for the right to economic self-determination in the current financial debt bondage must be the liberation of countries of the lending pact that directly curtails its liberty and control over its internal economic affairs. The exercise of economic self-determination shall therefore help repel the economic domination and elevate the principle of non-intervention as a vital element of the right to self-determination. The sovereign debt decolonisation represents a key normative component of the right to self-determination which recognises the need to restructure any form of external domination that reflect a similar degree of subordination or dependence similar to colonial times whether economic or political and shall not be limited to only the overseas possessions of the European power.[559]

The abolishing and decolonisation of sovereign debt relationship will offer the debt trapped countries defence against foreign influence and strengthen the normative promise of the principle of self-determination to the states. The normative promise contained in the UN

[559] Hébié, M. (2015). Was There Something Missing in the Decolonization Process in Africa?: The Territorial Dimension. *Leiden Journal of International Law*, *28*(3), 529-556.

resolution on friendly relations provided that every State have an inalienable right to decide its economic systems freely and without interference. The interference here includes any form by another State or international organisation, whether directly or indirectly, for any reason.[560] Moreover, the UN ruled against the use of economic or any other type of measures to obtain from another country the subordination of the exercise of its sovereign rights. Therefore, it is the core normative promise of self-determination that all forms of interference against the state's political, economic and cultural elements violate international law. Although the multitude of General Assembly resolutions addressing claims for neo-colonialism, especially Resolutions 3281 and 38/197, have failed to equate economic subordination to a breach of the duty to decolonize under international law, the Omani precedent serves as a test in this respect, to illustrate the systematic neo-colonialism ongoing in many territories.[561] In the case regarding the British protectorate of Oman, Great Britain argued that the sultanate was self-governing and therefore deemed any obligation to decolonize it as moot. The UN ad hoc committee reported that Oman was still subordinated to Great Britain in key areas such as the military, political and economic affairs. Accordingly, the General Assembly qualified British presence in Oman as 'colonial' and kept Oman on the list of non-self-governing territories until its complete independence in 1971.

7.4.2. Allocation of State Tradable Assets by National Legislatures as a Valid form of Debt Collateral

The struggle to free the subjugated people from the influence of external domination and the question of its relation to self-determination acquires political challenge as well as practical legal challenges. Aside from the theoretical question that every discussion raises, the practical challenge of safeguarding nations economic self-determination in the context of sovereign debt bondage is to advance a legal remedy well entrenched in economic justice, that will equally protect the rights and interest of the financial creditors. Nigeria, as a debt recipient state has experienced multiple layers of conditionality as a result of financial creditors demand economic policy conditionality in the absence of tradable asset. From the financial creditor's viewpoint, the fear of default has been the key reason for inserting various lending conditionality. Thus, conditionality shall not become the norm if the financial creditors can liquidate state assets and retrieve back the financial resources. For that reason,

[560] UN Res 2625
[561] *Ibid*

therefore, a change in the sovereign debt legal framework to include safe and tradable state assets will go a long way in solving the problem of debt recipient states having to live with conditionality that affects the core values of their right to economic self-determination. Tradable collateral in this instance shall not include assets that will lead the country into perpetual dependency; rather it shall include chattels and immovable assets that can be harnessed to recoup the debt without transfer of permanent ownership to the debtor or any other third party. In this new framework, access to financial credit will depend on the value of state tradable assets which stand as security that minimise the risk for financial creditors and give the state full control over their economic policies without the need for multiple layers of conditionality. This form of collateralisation of state assets can be achieved through the restructuring and transformation of ownership of resources back to the state. This entails the nationalisation of state resources to recover full sovereignty by acquiring the complete and permanent sovereignty of a state over its natural resources.[562] The Nationalisation of state natural resources is generally determined by a superior goal of justice and people's economic sovereignty and self-determination, not a matter of dishonouring the interest of foreign investments.

7.4.3. Bilateral Levels Contractual Legal Safeguard Clauses for Sovereign Debt Agreements

Like any other treaty, a loan agreement between the financial creditor and the borrower is a full treaty governed by the principles of international law. Some of the common principles governing a treaty include free consent, good faith and the *pacta sunt servanda* rule. Above all, however, a treaty shall by default be void if at the time of its conclusion it contradicts any peremptory norm of international law.[563] The right to self-determination is recognised as a customary norm of international law in which no treaty can modify its provisions except by a subsequent norm of general international law having the same character. The application of the right of self-determination requires a free and genuine expression of the will of the peoples concerned, and thus, a bilateral loan treaty must not inhibit the content of the right. In negotiating sovereign debt, various types of clauses can be inserted to ensure both the IFIs and the debt recipient state have the legal responsibility to

[562] Salomon, M. E. (2013). From NIEO to Now and the Unfinishable Story of Economic Justice. *Int'l & Comp. LQ*, *62*, 31.
[563] Vienna Convention on the Law of Treaties 1969

safeguard the right to economic self-determination respect the people's consent and avoid coercion. Some of the legal clauses that can strengthen the application of people's right to economic self-determination in the context of sovereign debt include the domestic action clause to deal with the challenges of participation in decision-making.

7.4.3.1. The Domestic Action Clause

Participation in the economic and political affairs of the state is sacrosanct to the right to economic self-determination that binds both the state and international organisation as a customary rule of international law. It is also an important legal requirement for the exercise of national self-governance, as contained in section 14 of the constitution of Nigeria as a State designed to be governed based on the principles of democracy and social justice.[564] The idea of the Domestic Action Clause is conceived in this study to balance the existing Collective Action Clause initiative proposed in the international financial credit world.[565] The Collective action clauses is an initiative advocated by financial creditors including the IMF, to serve as a Sovereign Debt Restructuring Mechanism that specifies who represents the financial creditors in loan-related negotiations and organise the voting procedures for restructuring the lending terms which include restraining the power of individual creditors of taking any unilateral legal action against a debtor.[566] While the collective action clause provides a mechanism that makes it easier for borrowers and creditors to modify their contractual obligation through the process of debt restructuring, however restructuring often makes things worse in Nigeria by extending the debt servicing tenure and honouring debts incurred by regimes regardless of the legitimacy of the debt. The history of debt restructuring in Nigeria is littered with examples of those fraudulent loans that added to the suffering and pain of the citizens. Thus, an alternative solution is to focus on people and domestic mechanism in the debt recipient state that will avail people the right to hold the government as well as the creditors more accountable.

Firstly, the proposed domestic action clause will make available a legal mechanism to question the role of the IFIs in the lending process and unveil the curtain of political shenanigans for debts incurred in the name of the state through an unconstitutional manner.

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[564] Constitution of the Federal Republic of Nigeria 1999

[565] Eichengreen, B., & Mody, A. (2004). Do Collective Action Clauses Raise Borrowing Costs?. *The Economic Journal*, *114*(495), 247-264.

[566] *Ibid*

The domestic legal clause shall bound the IFIs and provide for collective challenge mechanisms that safeguard people's right to economic self-determination by offering people the chance to institute a domestic legal action to question any foreign domination or consent obtained under fraud. In addition to recognising the right to ascertain consents, the domestic action clause gives people the right to revisit and continuously decide the terms of the debt agreement based on emerging social demands. The clause will help promotes the right of individuals and groups to participate in the self-governance process, including economic affairs and will ensure the IFIs be required to directly attend to the people in designing and implementing every project. Giving a direct audience entails also giving access to information of the lending facility, which will allow people to make an informed judgement and exercise their rights meticulously. The domestic action clause can also avail the people the chance to check the actions of the state concerning loan arrangement and management of the economic affairs of the state. The domestic action clause will avail the citizenry the right to review the loan deal and ensure the state government does not decide autocratically and will serve people better than the current democratic system, which simply offers people the chance to have a say on important affairs of the state once every few years through the election ballot.

7.4.3.2. Amendment and Exit Clause

With the constantly changing social realities, societies may affect fundamental changes to their economic and social order to reflect societal demands. This establishes the fact that there is a need for one or more legal mechanisms to help correct or update lending agreements that affect people's economic lives. To safeguard the continuous character of people's right to self-determination, a provision for amendment of the treaty from time to time, and depending on the general situation, is necessary. Therefore, where there are a large enough majority to demand an amendment to certain terms of a lending treaty, then the people should be able to do that as of right, in the same way, that article 39 of the Vienna Convention provides "A treaty may be amended by agreement between the parties. The amendment clauses provide the people as well as the creditor with the possibility to amend the bond with majority consent, to change any terms of the contract, except the date of payment of the principal or interest on the bond or the principal amount of the bond or the interest rate thereon. This can be initiated through an internal judicial review, permitting

challenge to particular policies and demanding amendment as the general voice of the society. The judicial review provides the mechanisms for the people to respond to decisions that can be deployed more rapidly than political processes. In this manner, judicial review may provide a strong epistemic mechanism for making adjustments to the treaty.

7.5. Summary of the Chapter

The foregoing discussion in this chapter has been on the role of international in contemporary sovereign debt bondage. The chapter presents the legal evaluation of the role of international law on the subversion of people's economic self-determination by the IFIs lending conditions, reflecting on the study findings and understandings. The *TWAIL* approach in this chapter questioned the role of international law in promoting institutions neo-colonial economic world order. The chapter critics the mainstream international law liberal democratic theories and International human rights — in their design and application — promoting the hegemonic interests of international financial institutions, particularly the promotion of neoliberal values and the operation of the global economic order. One important issue identified in the study is that often the violations by the international institutions are obscured by the rhetoric of good governance promoted by the contemporary liberal democratic and human rights regimes. The chapter discussed the association of internal self-determination to liberal democratic culture and the complex pattern of authority as having a huge impact on the internal strife and indeterminacy in Nigeria. The introduction of a complex market system presented as a single set of alternative economic policies which distorts the national plan reflect the flaws of the liberal democracy built on individualism against the collective national interest.

The chapter initiated the process of reconceptualising self-determination by focusing on TWAIL's counter-hegemonic potential of human rights. This highlighted the need to pay attention to the voices of the less developed countries and the *TWAIL* robust conceptual understanding of the international legal framework that significantly strengthen and provide proper calibration of the balance between the rights and obligations of international law subjects. The chapter applied the *TWAIL* counter-hegemonic approach in proposing normative and practical guidelines on the application of self-determination. The normative guideline suggests the principle of self-determination should retain its essentially revolutionary outlook, which includes decolonisation of sovereign debt relationship through

abolishing of debt and nationalisation of state resources. The chapter also proposes contractual legal clauses including domestic action clauses and amendment/exit clause that strengthen self-determination in a significant way by achieving a greater measure of participatory powers and protections of freedom of economic choice and authority.

8. Conclusion and Recommendation

8.1. Conclusion

This chapter summarises and presents a conclusion on the general aim and objectives the study set to address. It explains the theoretical and empirical contributions, the policy implications and recommendations, linking each to the questions and objectives of the study. Having investigated and closely examined the sovereign debt conditionality in Nigeria, the central thesis of the study is that sovereign debt conditionality has become a major challenge impacting the application of people's right to economic freedom and self-determination. In four decades of the international financial institution's vigorous campaign and implementation of the economic policies and lending conditions, nearly all loan facilities failed to live to the advertised effect of addressing the financial imbalances of indebting countries. Despite the recurrent and perhaps predictable setback of the financial credit in Nigeria and the overwhelming public disapproval of the lending agreements between the state and the IFIs, however, the country remains legally and politically bonded to implement the financial creditors' economic policies as part of the lending terms and conditions. This, as argued in previous chapters, only points to one direction, which is the debt conditionality not introduced to change the economic structures in a way that might contribute to robust economic growth and development, but to align and subjugate the economy of the debt recipient states to that of the financial creditor's interest. In other words, as established in this study finding, the IFIs policies are completely divorced from the social, economic, cultural and political realities of Nigeria; therefore, the sovereign debt is only being used as a mechanism of control and exploitation in a condition of neo-colonialism.

The initial aim of the study was first and foremost to explore and evaluate how the sovereign debt terms and obligations affect the application of the right to economic self-determination in Nigeria and what role had the international law played and will have to play to safeguard the right. To achieve this aim, the study sets its objectives as follows.

- To examine the nature and scope of the right to self-determination under contemporary international law.
- To investigate the sovereign debt relationship and the mode of implementation of various lending conditions in Nigeria.

- To evaluate the role of international law and the potential legal solutions on the application of the right to economic self-determination in the context of contemporary sovereign debt.

Whereas the research questions include the following:

1. How does the IFIs economic lending terms and conditionality affect independent economic decision-making, collective aspirations and people's economic self-determination in Nigeria? and
2. In what way(s) can the law safeguard people's right to economic self-determination in the context of sovereign debt bondage?

Having completed the research, what we now know is that despite the right to self-determination remains a fundamental principle of international law that bestow upon all peoples the right to determine their future which carries an obligation *erga omnes* that no state is allowed to derogate from. However, the application of right is becoming increasingly undermined, especially with the rise of post-colonial neo-colonial experience of globalism in the international economic and political order. The application of the principle suffers from a lack of adequate backing from the international law to address the economic injustice and massive disconnect between the state economic and political policies and the people's general interests. The findings of the research underpinned the theoretical approach of the TWAIL adopted in the study, which asserted the neo-colonial nature of the international economic and international human rights law. The TWAIL recognised the necessity for reform and rejuvenation of the right to self-determination to tackle the growing economic crises affecting the less developed countries and their development. Like most of the TWAIL, this study criticized the role of international law in promoting the neo-colonialists agenda that runs contrary to the general purpose and objectives of the UN peace mission built on equal right and self-determination of all states. Based on the strength of evidence of the research, the study found support to the theoretical assumption of the concept of neo-colonialism that see the relationship between the international financial institutions and the less developed (former colonial African territories) as designed in a way to exploit and impoverish indebted states to serve the interest of the neo-colonial power. This is often achieved through the rhetoric of good governance by IFIs, as a pretext to gain the moral ground to partake in the governance mission of indebting states.

Giving that the main goal of the study was to investigate how the sovereign debt conditions affect people's right to economic self-determination in Nigeria, the field research analysed the direct interactions with different stakeholders and state officials in Nigeria to elicit specific information about the participant's views. Primary data were collected from interviews with participants that cut across government agencies, legislative and executive members of the government. The study examined the responses of different government decision-making units, including the state executives, legislators, and other government agencies who are at the centre of actions that can attest through their experience and personal knowledge on the decision-making process established in implementing conditionality for the external financial debt. The interviews centred on loan negotiation processes, that is, the design process, constitutional provisions, people's inclusive decision making. In terms of the democratic process, the field research covered the views about the people's mandate, consent and the general implication of the loan deals. While the research put together the different personal account and experiences of the research populations in the real world, however, using such an approach alone, do not always do justice to socio-legal research of this nature. Some of the research questions cannot be adequately investigated without reference to documentary materials.[567] Hence, the content of the analysis as well as contained analysis on data from primary legal documents and sources regarding the arrangements between Nigeria and the international financial creditors. This covered the Memorandum of Understanding and other legal contracts that stipulate the relationship, rights and obligation between the government and the institutions. Thus, the research pays careful attention to the collection and analysis of legal documents that govern the relationship between the parties, although the document cannot be treated alone without oral data to give some context to it.

Among the themes that emerged from the analysis of the implementation of financial lending conditionality of the IFIs, is the huge disconnect between people's general will and most of the economic and social policies, which have been the root cause of the deep economic, political and ethnic crises in the country. The Nigerian experience revealed the IFIs economic policy conditionality and good governance rhetoric had become a mechanism the lenders used to introduce policies, not concerned with addressing the economic challenges and the mismanagement of resources but promoting systematic control and dominance of resources and governance of the country. Having defined the social and financial problem in Nigeria as bad governance, in this way the institutions can be seen as

[567] Silverman, D. (Ed.). (2016). *Qualitative Research*. 3rd ed. Sage. P79

furthering the course of democracy and human rights, including civil and political rights and the economic, social and cultural right. Moreover, the finding of the study countered the widely expressed views that self-determination is synonymous with liberal democracy and the universal mission of democracy strengthens self-determination. The equation of self-determination to liberal democratic government proved at least not enough solution to prevent marginalisation and economic injustice done in the name of sovereign debt conditionality in Nigeria. Even as the concept of Free, Prior and Informed Consent (FPIC) look to settle the inherent challenges of democratic processes, the findings of this study revealed that the FPIC sometimes work as a mere procedural, box-checking requirement which does not offer answers to the constant review of consent due to emerging socioeconomic facts and figures. The concept of free and fair elections as essential for this representative government is exposed to be feeble and easily manipulated by political parties.

The study in Nigeria explained the deep social and ethnic crises caused as a result of almost a four-decade imposition of economic policies in the country through the lending conditionality. The findings revealed the large-scale borrowing in Nigeria resulted in multiple layers of debt obligations, which pushed the country into a situation having to accept significant economic and social conditionality, which greatly restrict its freedom of economic decision-making power over the domestic affairs of the country. In implementing some of these economic reforms, the state, more often than not, subverted the democratic process making the country lack economic autonomy, accountability and the ability to choose, design and implement its policy—the government authority only buy-in to the policy reforms backed by the IFIs.[568] On many occasions, the administration bypassed the National Assembly to pursue debt with harsh political strings without an appropriation by the National Assembly. Not only do the IFIs connive with the Nigeria authorities to pursue unpopular policies, the financial institutions systematically approve sabotage of credit by the ruling circles by being complacent to the mishandling of loan facilities as necessary for their debt trap. The research also revealed the under-promotion of social and economic rights by the IFIs as a ploy to install ethnocentric conflicts, which diffuse the power of nationalist fronts threatening the IFIs neo-colonialist agenda in Nigeria. The findings revealed most of the ethnoreligious belligerent groups in the country are agitating against the economic marginalisation caused by, among other things, the neoliberal reforms in Nigeria. However, the tribal inclination and lack of unity and nationalistic agenda serve as a big factor for keeping the IFIs and their

[568] Lumina C. (2006) 1

safeguarding their hegemonic agenda and tremendous influence in the economic affairs of the country.

Because economic self-determination mainly deals with the decision-making process and not the outcome of policies, the study investigated the history of the various activisms and participation by Nigerians to assert their rights to accept or reject economic lending policies and freedom of choice. The study discovered resentments from organised labour and different sector of the country expressed through explicit public rejection of the economic lending conditions. A breakdown of the number of protests shows a steady increase in the number of strikes in the military interventionist era. In both periods, trade unions have increasingly embarked upon strike action. Moreover, the acute marginalisation of the population from participation in economic decision-making has led to an increasing crisis of legitimacy of the state. Several ethnic groups have tended to rely on identity-based politics to gain access to the state and the resources that it controls or to protest exclusion and oppression, as well as to demand basic rights and socioeconomic provisioning. The policies have spawned protests and resistance across the local or host communities of the oil-rich Niger Delta region in the past two decades.[569] The struggle of the Movement for the Survival of Ogoni People (MOSOP), the Movement for the Actualization of the Sovereign State of Biafra (MASSOB) were essentially driven by the quest for self-determination, to wrest their ecology from Shell and force the Nigerian state to accept their right to control their land and the proceeds therefrom.

Most importantly, the failure of the international law and the state to protect its people and address the challenges of sovereign debt conditions revealed the flaws in the international law and human rights regime of the universal promise and goal of the right to self-determination. The study questioned the role of international law in promoting institutions neo-colonial economic world order. The challenges in the contemporary application of economic self-determination include the universalisation of human rights and good governance mission, which gives international financial institutions the moral ground to rule and decide economic policies to borrower country. Furthermore, the chapter discussed the association of internal self-determination to liberal democratic culture and the complex pattern of authority as having a huge impact on the internal strife and indeterminacy in Nigeria. The study argued on how the IFIs exploit the colonial heritage of the international

[569] Obi, C. I. (1997). Globalisation and Local Resistance: The Case of the Ogoni versus Shell. *New Political Economy*, *2*(1), 137-148.

law to control millions of people living in the less developed countries, which is a key challenge for the future of the UN peace and friendly coexistence. As a matter of normative legal status, the attack on the right to economic self-determination by the international financial institutions exposed and questioned the notion of international law neutrality and universality. The lack of legal accountability and responsibility of the international financial institutions further revealed the hegemonic status and why the international law needs to reinvigorate the resistant language in self-determination law, which confers people ultimate authority and self-determination.

Based on the study finding, the distinct effect of the current sovereign debt bondage is the violation of the generally accepted right to economic self-determination as a norm of international law, which connotes the freedom of the population of a sovereign state to determine its internal political order without external interference. While the lending obligations and conditionality such as privatisation and liberalisation have, over some time, caused a nearly total lack of control and management of resources in Nigeria, what is more, central to the question of economic self-determination in this study is the violation of people's freedom of choice and consent regarding the loan agreements and implementation. The study analysed the role of international law in promoting the neo-colonial nature of the IFIs' sovereign debt conditionality that causes countries to lose their inalienable right to economic self-determination that offered all people the right to freely set the course of their lives and control the destinies. The study argued that the contemporary liberal democratic and human rights theories of right to self-determination extended the scope of international financial intuitions operations through the universal human rights and good governance mission in debtor countries. The transformation of self-determination to liberal democratic and human rights theories generally results in an elusive account of the international legal right to self-determination and its practical application.

The mainstream contemporary international law works within the traditional liberal paradigm, which appears largely committed to good governance and universalisation of human rights mission. This, as argued throughout the thesis, creates the conditions in which international financial institutions interfere and dominate national economic policy space while acting in defence of prudence economic management. The framing of IFIs lending policy of good governance as a mission of the international human right implicitly legitimised and gives the legal as well as political grounding for international organisations to partake in the governance and impose various political and economic agendas. Furthermore,

the design of self-determination as an internal right serving primarily within existing state structures has made it difficult to remedy those types of economic injustices that involve external elements. In other words, if internal right directly challenges the legitimacy of regimes insensitive to the opinions of their citizenries, in revolt against that, the right becomes nearly as adversarial to the interests of states and its stability as a right to secession permitting their disintegration. If no escape hatch is permitted, then the public is condemned to remain governed by their oppressors. The absence of a proper functioning channel to challenge and remedy this potential conflict of interest constitutes a major challenge to the application of economic self-determination. That, in turn, calls into question several legal rules that should govern the relationship between the two subjects of international law.

The study proposed the reconceptualising of self-determination by focusing on TWAIL's robust conceptual understanding of the international legal framework that significantly strengthens and provides proper calibration of the balance between the rights and obligations of international law subjects. The study applied the *TWAIL* counter-hegemonic approach in proposing normative and practical guidelines on the application of economic self-determination in the context of sovereign debt bondage. The normative guideline suggests the principle of self-determination should retain its essentially revolutionary outlook, which includes decolonisation of sovereign debt relationship through abolishing of debt and nationalisation of state resources. The study proposed the application of people's right to economic self-determination to reflect and acknowledge the need for a radical approach to include termination of all financial credit relationship. For the optimum application of the right to economic self-determination in the context of sovereign debt bondage, the study proposed a revolutionary approach that seeks to suspend any lending relationships between Nigeria and international financial institutions as a response to the claims of neo-colonialism.

Furthermore, the study proposed a change in the sovereign debt legal framework to include safe and tradeable state assets would go a long way in solving the problem of debt recipient states having to live with conditionality that affects the core values of their right to economic self-determination. The tradeable collateral in this instance shall include chattels and immovable assets that can be harnessed to recoup the debt without transfer of permanent ownership to the debtor or any other third party. From the financial creditor's viewpoint, the fear of default has been the key reason for inserting various lending conditionality. However, conditionality shall not become the norm if the financial creditors can liquidate state assets

and retrieve back the financial resources. The use of tradeable asset can help countries like Nigeria as a debt recipient state, which has experienced multiple layers of conditionality as a result of financial creditors demand economic policy conditionality due to lack of tradeable asset. The study also proposed contractual legal clauses including domestic action clauses and amendment/exit clause that strengthen self-determination in a significant way by achieving a greater measure of participatory powers and protections of freedom of economic choice and authority.

8.2. Recommendations

The recommendations in this section reflect the study findings regarding the economic injustice and self-determination that has been ignored and violated by the international financial institutions. Thus, to improve the application of the right to economic self-determination in the complex case of sovereign debt conditionality, the study adopted the third world approach to international law framework that provides for optimum application of the right to economic self-determination for greater attainment of the right in the context of the international sovereign debt relation. The investigation into sovereign debt bondage in Nigeria demonstrated that with the current global economic order, the people's right to economic self-determination had been affected by IFIs lending operations, and the liberal democratic and human rights law no longer solves the crises concerning the third world people's right to self-determination. The universal promise of the principle of self-determination is nearly useless without countervailing checks on economic domination, which currently is more susceptible to being easily subdued by both internal and external forces. Hence, there is a need for a shift in the focus onto developing ways in which economic self-determination can be safeguarded through comprehensive and effective legal and political solutions that are both just and appropriate. The recommendations processed in this study are both legal and political that set to tackle the modern sovereign debt bondage and economic domination.

8.3. Policy Recommendations to the State(s)

8.3.1. Suspension of all Debt Servicing

After years and decades of lending conditionality that have left the third world in a state of perpetual economic and social bondage, the states must be able to draw upon their right to economic self-determination to suspend all debt servicing and thus discontinuing the effect of the sovereign debt bondage. This does not suggest the delegitimisation of all previous debt, which this study see as going down a slippery slope, which runs the risk of political and legal tensions. The recommendation, however, is for the need for the debt obligation to be analysed from its origins and be restructured in a way that will conform to the people's rights of economic self-determination and freedom of economic choice and permanent control of resources. The debt conditions imposed by the international financial creditors violate constitutive elements of the principle of economic self-determination and forms the foundation of the acute marginalisation of the population from benefiting from their wealth and participation, which led to an increasing crisis of legitimacy of the state. A new restructuring deal must look to produce a more equitable solution for paying off the loan rather than servicing the debt in a way that continuously impoverishes the population by diverting the resources that should have been used for essential services such as education, medical care, water and electricity. What is appropriate in terms of the repayment will depend upon all the circumstances of the case, such as the nature of the terms of the contract, the nature of the resource, the amount of capital involved, the interest so far recouped, the effect of the existing arrangements on the people and the ability to pay compensation.

8.3.2. Nationalisation of Resources

The transfer of ownership of resources and the national assets of Nigeria to few private corporations has worsened the living standard and stretching the social, economic, political life as well as the national unity. To continue rolling along the path of privatising and selling the states, natural resources will only worsen the challenges of secessionism and threaten the corporate existence of the country. Thus, for the national interest and well-being of the peoples, the state shall assert its right to take over and control the exploitation of their natural resources. The principle of nationalization is now universally acknowledged provided it is in the public interest, a characteristic of which a State is itself the best judge. The country should stand ready to nationalise its resources if necessary, to protect the public interest and

the economy from the fallout of the debt crisis. In the present case, nationalization and expropriation are considered crucial on the grounds of public and national interest, which overrides all private corporate interests, both domestic and foreign. The state should put all of the private license natural resources and their facilities into public control to address the rising challenge of marginalisation and impoverishment. It took the devastation of the great depression of the 1930s to drive home this lesson to the ruling classes in Europe and America, and it now re-establish itself in the pandemic COVID-19 virus which has shown that poverty and life insecurity is not a condition that can be alleviated through private charity and neoliberal individualistic values. After this mortal threat to the system, the world-leading neoliberal champions began to realise that social insecurity and the threat to national survival require much more than private charity. The weakening of the state institutions and significantly establishing the liberal state with minimal intervention is taking its toll on the realisation of people's aspirations in Nigeria. State intervention is crucial.

8.4. Regional African Policy Recommendation

The former colonial territories, and particularly the African states, have had negative experiences with sovereign debt, and yet collective African perspectives on debt have been largely absent from the ongoing sovereign debt debate. After more than three decades of IFIs claiming that many of Africa's economic problems were a result of excessive and inefficient state intervention in the economy, it is time to drop this claim and change strategy to save the continent from the rising neo-colonial dangers and the increasingly pervasive concerns for social well-being and self-determination.[570] The experiences with the neoliberal economic policies contained in the structural reform suggest that the qualities of people can only be improved through public investment. The African states must resist the attempt to remove the state from the economy. The states are created to meet the specific needs of its people: provide economic and political security and promote its desired national goals; in return, citizens gave the state their loyalty. When the states cease to meet the needs of its citizen, they lose their *raison d'etre* and endanger their people's right to self-determination. The neoliberalism and the historically embedded political ideology of the free market, have failed the African states for reasons that are not far from their common historical root. The ideology has been analysed as the rise of the American global ascendance. This, by so many

[570] Harrison, G. (2005). Economic Faith, Social Project and a Misreading of African Society: The Travails of Neoliberalism in Africa. *Third World Quarterly*, *26*(8), 1303-1320.

accounts, represents a form of dominance ending with the less developed countries being the most affected. Whatever the relative merit of the concept, there is a broader concern about its effect on African self-determination and growth. Ironically, even the USA's neoliberalism coexists with strong protectionism and a desire heavily to subsidise some markets.[571]

Furthermore, African countries under the African Union should create a fair, independent and transparent international sovereign debt arbitration process to settle the disputes that invariably arise. The arbitration should be followed by regional rule and regulations to set the pursuit of international agreements on a stronger and uniform contractual approach. The regulation should specify the conditions under which funds will be disbursed before any program.[572] The condition shall reflect the Banjul charter support for people self-determination against the growing economic and financial bondage. The African Court of human right requires a closer examination of sovereign debt and the principle of self-determination, which may generate a new understanding of the scope and content of the principle.

8.5. Limitations and Future Research

Despite the comprehensive and detailed research on the sovereign debt bondage presented in this study, however, it is important to stress here that the study has been primarily focussed on a single case of Nigeria, and thus, some of its findings cannot be used for generalisation. Nonetheless, the research provides a strong theoretical explanation and not aimed at replicability. Therefore, the findings of the study should not imply a universal relationship and operations of the international financial institutions concerning the financial credit and lending conditionality. However, for those cases with similar facts, the theoretical analysis and evaluation of the principle of self-determination can be deducted to the extent of their similarity. Another limitation and possibly a recommendation for future research endeavour is the area of primary data on the loan negotiation proceedings. One of the features of the international financial credit conditionality, which affects research on it, is the privilege of communication and the secrecy running through the loan arrangement. The sheer amount of information escaping research of this nature is quite a drawback to this and similar researches on sovereign debt and the lending arrangement.

[571] *Ibid*

[572] Brooks, S., Lombardi, D., & Suruma, E. (2014). African Perspectives on Sovereign Debt Restructuring.

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